NELSON MULLINS

FinTech University**:**

Wealth Preservation Planning Strategies

November 15, 2022

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INSURANCE GROUP

PRIVATE INSURANCE

Make Insurance Work for You

Mark Sims

What are ENTERPRISE RISKS?

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Hidden Risk in Your Business

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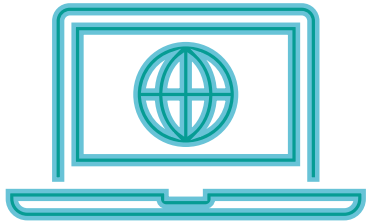
Commonly Selected Coverages

Loss of Key Person / Key Talent

Loss of Key Customers / Key Contacts

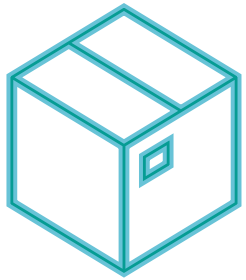
Brand / Goodwill Rehabilitation



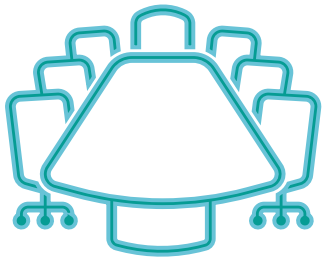
Cyber Liability

Administrative or Regulatory Actions

Defense Cost and Legal Expense



Loss of Key Suppliers



Directors and Officers

Loss of Rental Income

Trade Credit Risk

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According to Aon's 2019 Global Risk Management Survey

(2019 Global Risk Management Survey - Results | Aon)

partially insurable | uninsurable | insurable

1. Economic slowdown / slow recovery	2. Damage to reputation / brand ☑	3. Accelerated rates of change in market factors	4. Business Interruption ☑	5. Increasing Competition
6. Cyber attacks / data breach ☑	7. Commodity price risk	8. Cash flow / liquidity risk	9. Failure to innovate / meet customer needs	10. Regulatory / legislative changes ☑
11. Failure to attract or retain top talent	12. Distribution or supply chain failure ☑	13. Capital availability / credit risk ☑	14. Disruptive technologies / innovation	15. Political risk / uncertainties ☑
16. Exchange rate fluctuation	17. Concentration risk (product, people, geography)	18. Workforce shortage	19. Counter-party credit risk ☑	20. Aging workforce and related health issues

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High Deductible and Excess Reimbursement Policies

- Commercial General Liability
- Commercial Workers' Compensation
- Commercial Auto
- Commercial Property
- Self Funded Health Insurance Deductible Reimbursement

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How does PRIVATE INSURANCE work?

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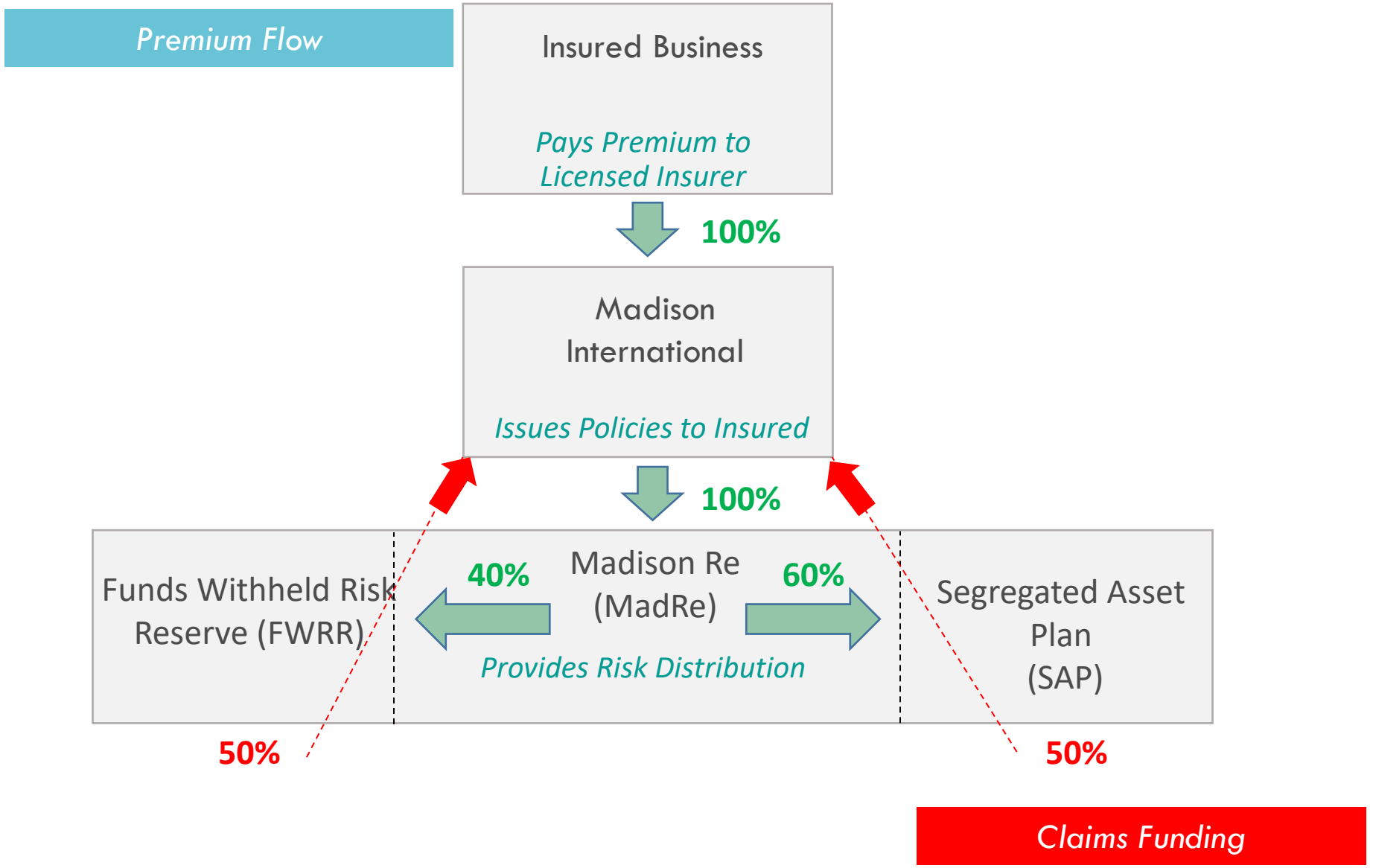
Premium & Claims Flow



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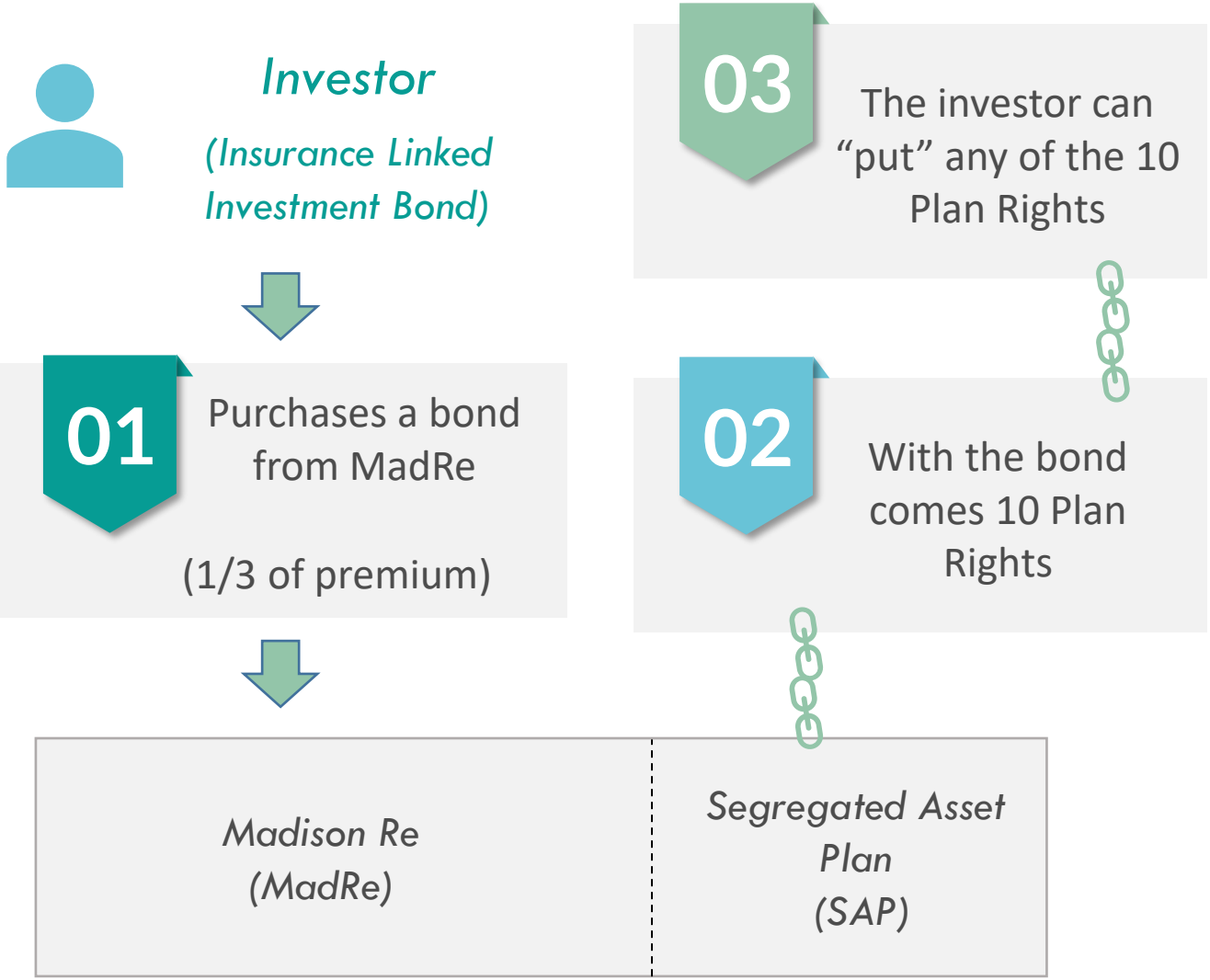
The Bond Purchase Program

Premium Flow



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Structure

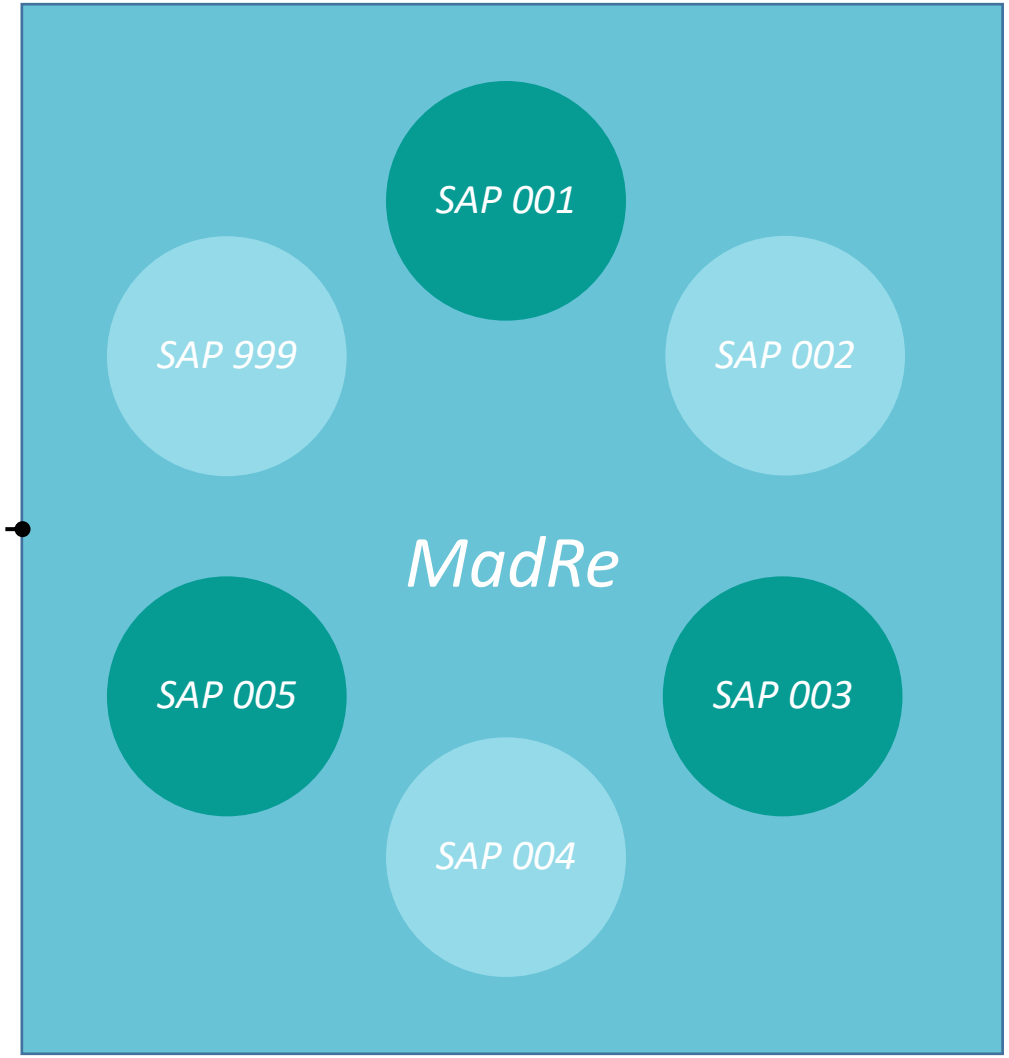
Madison International

Puerto Rico

Segregated Asset Plan

Tax Benefits

Risk Sharing



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Puerto Rican and Other Foreign Captive Insurance

In these transactions, U.S owners of closely held entities participate in a purported insurance arrangement with a Puerto Rican or other foreign corporation with cell arrangements or segregated asset plans in which the U.S. owner has a financial interest. The U.S. based individual or entity claims deductions for the cost of "insurance coverage" provided by a fronting carrier, which reinsures the "coverage" with the foreign corporation. The characteristics of the purported insurance arrangements typically will include one or more of the following: implausible risks covered, non-arm's-length pricing, and lack of business purpose for entering into the arrangement.

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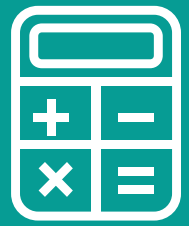
Who's Doing Business in Puerto Rico

1	12 out of the top 20 pharmaceutical and biotech companies have manufacturing sites in PR	5	Most of Microsoft software updates downloaded in the Americas is validated and distributed from Puerto Rico
2	12 out of the top 20 medical devices companies have manufacturing sites in PR	6	Honeywell operate business support operations such as engineering design, supply chain, finance, and IT among other, for the company's defence programs
3	56 tech companies have chosen Puerto Rico as home in the last 5 years.	7	Amgen has its largest manufacturing facility located in Juncos, PR. More than 90% of its products are either formulated, finished or packaged at this site.
4	Since 2012, at least 804 companies under Act 20 (export services) and 1,404 individual investors under Act 22.	8	Top countries with companies in Puerto Rico

Formation Process

Data



Feasibility

Select

Implement

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A very efficient and fast-track process to establish a Private Insurance structure.

- *One time start up cost: 6% of first year premium – maximum of $60K*
- *1/3 of premium for Initial Bond*
- *All-in Management Cost: 8% -10% depending on premium size*
- *Federal excise tax of 1% of annual premium*

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MARK SIMS

PRESIDENT GLOBAL BUSINESS DEVELOPMENT

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Wealth Preservation Planning Strategies

Presented by: David A. Warren, JD – Co-Founder and Chairman

U.S. as a Tax and Privacy Haven?

- "The U.S. is emerging as a leading tax and secrecy haven for rich foreigners." *Bloomberg Magazine*, January 27, 2016
- "America is the new Switzerland." *Financial Times*, May 16, 2016
- "The United States is now becoming one of the world's largest tax and secrecy havens." *Washington Post*, April 5, 2016
- "The United States has become a place of choice for foreign investors." *Daily Business Review*, April 25, 2017

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Coming to America

- **International Families with Ties to the U.S.**
  - Education
  - Marriage
  - Business Activity
  - Not Nefarious or Bad Actors
- **Tax and Privacy Issues**
  - Taxation Planning (NOT Tax Evasion)
  - Privacy Laws (NOT Secrecy)
  - Pandora Papers
  - Domestic Asset Protection v. Offshore Asset Protection
  - Uncertainty (Pandemic and Government Stability
  - Corporate Transparency Act (CTA)
- **Common Reporting Standard (CRS)**

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"The choice of a state in which to establish a trust is as critical as the decision to create one."

- Elizabeth Mathieu, President of Neuberger & Berman

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Trust Situs Selection

- Trust laws vary significantly from state to state.
- A few states are “in a race” to establish the most progressive trust laws in an attempt to capture trust business.
- Tier 1 Trust Jurisdictions*
  - South Dakota
  - Delaware
  - Nevada
  - Alaska
  - Wyoming?

** Trusts & Estates Magazine, January 2022 Issue*

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What are the Factors Considered when Determining Top-Tier U.S. Trust Jurisdictions?

- Asset Protection
- Dynasty Trust/Rule Against Perpetuity
- Taxation
- Privacy Rules
- Modern Trust Laws

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What is a Domestic Asset Protection Trust?

- A ***self-settled*** trust that protects assets from creditors (including future spouse).
- Strategy that legally shields assets from third party liability (future spouse) while permitting settlors to receive ***income,*** retain some ***control*** over trust assets AND enjoy a ***discretionary beneficiary interest*** during their lifetime.
- Most states do **NOT** have an Asset Protection Trust Statute.

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Domestic Asset Protection States

- Several states have passed Domestic Asset Protection Statutes.
- **South Dakota, Nevada, Alaska, and Delaware** are consistently recognized as having the most robust and powerful Asset Protection Statutes in the nation.*

* ***Best Situs for DAPTs in 2021*** *Mark Merric, Daniel G. Worthington, Paul MacArthur and John E. Sullivan, Trusts & Estates Magazine, January 2021*

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Domestic Asset Protection States (cont'd)

- Very compelling planning tool for high-risk individuals and pre-marital planning.
- Not all Domestic Asset Protection Statutes are created equally.
- Fraudulent Conveyance (look-back):
  - South Dakota – 2 years
  - Delaware – 4 years
  - Wyoming – 4 years
- Best of both worlds – domestic and offshore asset protection in one instrument.

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"The reason the United States earned the title of the "best" tax haven is that its trust law allows for the indefinite suspension of estate tax over many generations, whereas other jurisdictions can't."

- The Worlds Best Tax Haven: The United States. Forbes, September 2019

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Dynasty Trust

- Definition – A trust that is not subject to the rule against perpetuities and, therefore, lives forever.
- Driven by state law.
- South Dakota allowed for the first Dynasty Trust in the nation in 1983 by **abolishing the rule against perpetuities**.

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Dynasty Trust (cont'd)

- Dynasty Trusts ***avoid federal taxation on trust assets forever*** because there is never a forced distribution of assets.
- Very important planning tool that **protects family wealth over generations**.
- Not all states have abolished or amended the Rule Against Perpetuity, clearing the way for Dynasty Trusts.
- State constitutional issues.
- Dynasty Trust states are **not created equally**.

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State Trust Taxation

- Income retained in a trust is taxed in most states at applicable income tax levels.
- A handful of states do not have an income tax and, therefore, do not tax retained income in trusts, including South Dakota.
  - Kaestner Case
  - ING Trust
  - Community Property Trusts

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Tax Trust Planning

A **COMPELLING** tax planning opportunity exists to:

- Avoid federal estate taxation forever through a forced distribution (Dynasty Trust).
- Avoid state taxation on capital gains low-cost basis assets (ING).
- Avoid state taxation on undistributed income.
- Reduce state insurance premium taxation.
- Obtain a 100% step-up for marital property.

SIMPLY BY SELECTING THE PROPER TRUST SITUS.

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"For reference, in planning, "secrecy" has historically meant that no one — not even the government — sees your affairs. "Privacy" has historically meant that the public can't see your affairs but the government can. The days of secrecy are dead. So, we talk about privacy."

- The Worlds Best Tax Haven: The United States. Forbes, September 2019

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Trust Matter Privacy

- Very important issue for high-net-worth families and closely held business owners.
  - Quiet Trust – no disclosure requirement.
  - Court Seal – Keeps trust information out of the public domain.
- *South Dakota* – Total Seal Forever/Not Discretionary/Quiet Trust
  - Delaware – Seal for 3 years/discretionary.
  - Most states – Open to the public.

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Privacy vs. Secrecy: The Importance of KYC

- Strong and thorough KYC (Know Your Customer) is essential.
  - World checks.
  - Source of funds.
  - Verification of good character/tax compliance in home state.
- Not everyone coming to the U.S. is nefarious.
- Need for Uniformity of Regulations among trust companies and states.
- Corporate Transparency Act (CTA).

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The Pandora Papers

- Massive data breach involving 14 foreign service providers.
- 11.9 million confidential documents.
- “There is no evidence in the Pandora Papers documents that any of the foreigners with trusts in the United States sheltered criminal proceeds.” - The Washington Post
- Irresponsible Reporting – The Rest of the Story
  - Visit our podcast page to hear the episode at: bridgefordtrust.com/podcasts

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Modern Trust Laws

- Directed Trusts
- Trust Protector
- Family Advisor
- Decanting

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Directed Trusts

- Through **bifurcating liability**, the directed trust model creates a legal framework allowing trustees and beneficiaries to work with asset managers and independent trust companies of their choosing.
- Directed trusts provide a family with maximum **flexibility and control** regarding the trust's asset allocation, diversification, investment management, and distributions.

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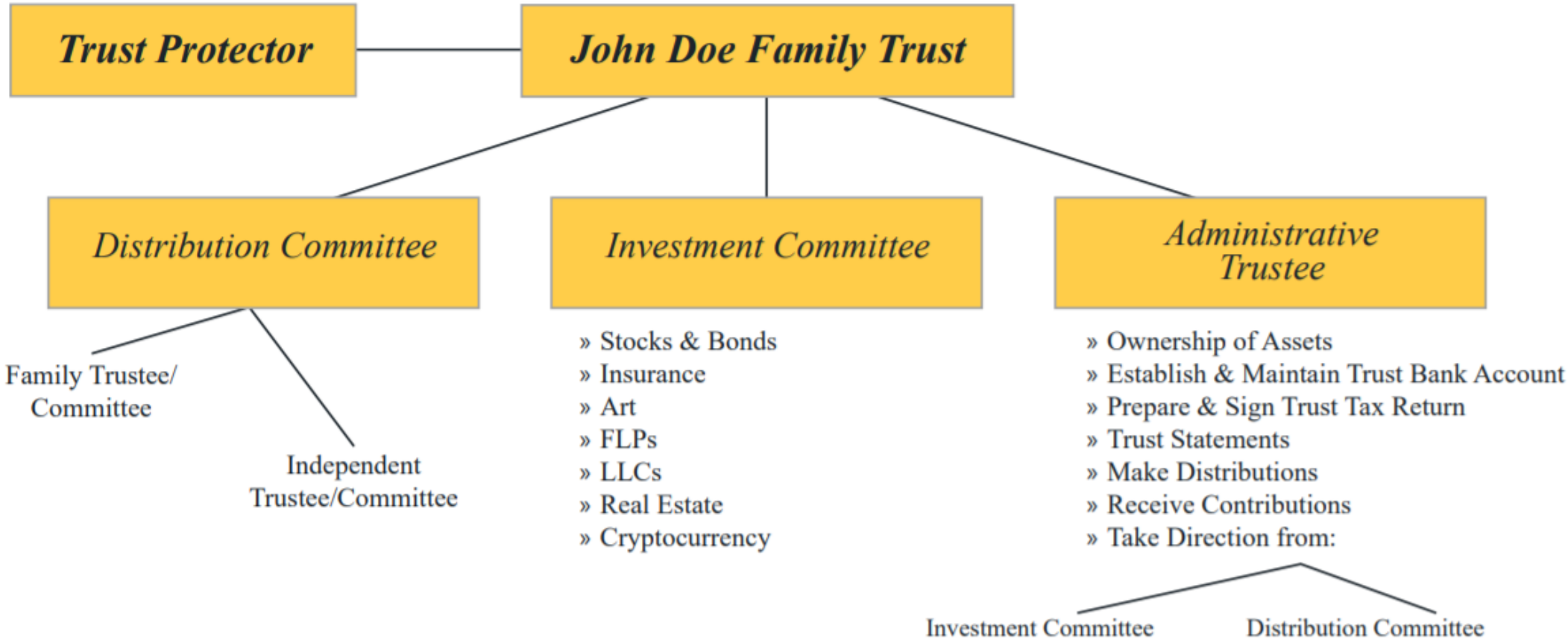
Typical Modern "Directed" Trust Structure



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Planning Opportunities for Foreign Families

- U.S. Trusts as Foreign Trusts
  - Failure of ***Court Test*** or ***Control Test*** = Trust Treated as a Foreign Entity.
    - Not Subject to U.S. Taxation
    - South Dakota Trust for Legal Purpose (SD Law applies)
    - Revocable v. Irrevocable (what is the difference?)
- Why a Foreign Trust?
  - Foreign born person living in U.S.
  - Foreign person with U.S. assets
  - Repatriation to the U.S.
  - Privacy/political corruption concerns
  - Reporting protocols
  - Taxation

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Private Placement Life Insurance (PPLI)

- Private Placement Life Insurance (PPLI) is a powerful wealth planning tool used by family offices and high-net worth individuals to invest in a tax efficient manner and transfer wealth to future generations more effectively.
- Unlike traditional “retail” insurance, PPLI is a unique type of insurance that takes advantage of insurance rules to avoid income taxation on internal income and taxation on the proceeds at the death of the insured.

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Private Placement Life Insurance (cont'd)

- Who benefits from PPLI?
  - Clients in high tax bracket and/or high tax states.
  - Clients looking to allocate to tax inefficient assets.
  - Clients with grantor trusts.
  - Clients with charitable intent, mostly for U.S. clients.
  - Clients who have long-term investment horizons and wealth transfer goals for subsequent generations.

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U.S. Trust Company v. International Trust Company

- International trust companies opportunistically come to the U.S. and obtain trust powers.
  - Lack experience with U.S. law and regulatory requirements.
  - Perform in-house functions prohibited in the U.S.
  - Underserve trusts.

A U.S. based trust company is the superior option for international families coming to the U.S. for trust planning.

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Choosing the Correct Jurisdiction

	South Dakota	Nevada	Wyoming	Alaska	Delaware
Dynasty Trusts	**Yes** *Ranked as #1 [1]*	**Yes** *Ranked as #2 [1]* *State constitution prohibits modification to RAP [2]*	**Yes** *Ranked as #5 [1]* *State constitution prohibits modification to RAP [2]*	**Yes** *Ranked as #4 [1]*	**Yes** *Ranked as #7 [1]*
State Income Taxation	**No**	**No**	**No**	**No** *Future uncertain*	**No** *Only for non-residents*
Community Property Trusts	**Yes** [3]	**No**	**No**	**Yes** *Future uncertain*	**No**
Domestic Asset Protection Statute	**Yes** [4] *2 year statute of limitations* *Exception for child support*	**Yes** [4] *2 year statute of limitations* *No exceptions for child and spousal support*	**Yes** [4] *4 year statute of limitations* *Exception for child support*	**Yes** [4] *4 year statute of limitations* *Exception for divorcing spouse*	**Yes** [4] *4 year statute of limitations* *Exceptions for child and spousal support*
Trust Protector	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**

You can access a copy of the chart at: bridgefordtrust.com/situs

** Denotes superior distinction among jurisdictions.*

[1] *Attorney Steve Oshins' "9th Annual Dynasty Trust State Rankings Chart"*

[2] *Worthington, Daniel G.; Merric, Mark; Sullivan, John E.; and Thomas, Ryan "Which Situs is Best in 2020?" Trusts & Estates January 2020*

[3] *South Dakota Special Spousal Trusts, House Bill 1039 (2016) (Sections 29-42)*

[4] *Attorney Steve Oshins' "11th Annual Domestic Asset Protection Trust State Rankings Chart"*

[5] *Attorney Steve Oshins' "8th Annual Trust Decanting State Rankings Chart"*

[6] *Murphy, Mary; Iyengar, Akshay; and Zhang, Alexandria "Tax Revenue Volatility Varies Across States, Revenue Streams" PEW August 2018*

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Choosing the Correct Jurisdiction

	South Dakota	Nevada	Wyoming	Alaska	Delaware
Directed Trusts	Yes	Yes	Yes	Yes	Yes
Decanting Statute	Yes *Ranked as #1* [5]	Yes *Ranked as #2* [5]	Yes *Ranked as #14* [5]	Yes *Ranked as #9* [5]	Yes *Ranked as #3* [5]
Trust Privacy Provision	Yes - Total Privacy Seal Forever *Automatically attaches*	No Total Privacy Seal [2] *Subject to judge discretion*	No Total Privacy Seal [2] *Subject to judge discretion*	No Total Privacy Seal [2] *Subject to judge discretion*	Yes - Three Year Privacy Seal [2] *Subject to judge discretion*
Special Purpose Entity	Yes [2] *Codified by statute*	No	No	No	No
Family Advisor	Yes	No	No	No	No
State Fiscal Health	Ranked as #1 [6]	Ranked as #29 [6]	Ranked as #48 [6]	Ranked as #50 [6]	Ranked as #38 [6]

You can access a copy of the chart at: bridgefordtrust.com/situs

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[1] *Attorney Steve Oshins' "9th Annual Dynasty Trust State Rankings Chart"*

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[6] *Murphy, Mary; Iyengar, Akshay; and Zhang, Alexandria "Tax Revenue Volatility Varies Across States, Revenue Streams" PEW August 2018*

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Additional Information

As an independent, full-service trust company with South Dakota Trust powers, Bridgeford Trust Company provides trust and fiduciary services to domestic and international families across the country and the world.

Contact David A. Warren, JD, Co-Founder & Chairman of Bridgeford Trust Company at dwarren@bridgefordtrust.com or by calling (605) 224-9189.

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Presenter Biographies

JONATHAN GOPMAN

Jonathan focuses on sophisticated wealth accumulation and preservation planning strategies for entrepreneurs. He assists them with their personal and business planning needs at all phases of the wealth accumulation and preservation cycle. In his practice, Jonathan takes a four-part approach to wealth preservation planning by assisting individuals in implementing sophisticated estate planning, tax deferral, tax-favored investment, and asset protection structures. Jonathan's personal practice emphasizes international wealth preservation planning. He has substantial experience in assisting high net worth families with international and domestic estate planning, implementing foreign trust structures, business planning, and general tax planning.

MARK SIMS

Mark Sims is President of Global Business for Captive Alternatives, LLC. With more than 25 years of experience, Mark is an expert in the field of enterprise risk management and insurance consulting. In his role as President, Mark helps businesses insure catastrophic risk and employee benefit programs, converting premiums into financial assets through Private Insurance Strategies. Since joining CapAlt in 2000, Mark has worked closely with tax attorneys, estate planning firms, family offices, and trusted advisors to create customized risk management solutions for HNW individuals and business owners across multiple sectors.

DAVID WARREN

David Warren is Co-Founder and Chairman of the Board of Bridgeford Trust Company, as well as a member of the Trust Administrative Committee. He is also President and CEO of Bridgeford Advisors dba Bridgeford – a sister company operating throughout the country and around the world providing consultative, planning, business development, and marketing support to Bridgeford Trust Company. David is an attorney with over 20 years of professional experience practicing law and working in the financial services industry serving the trust and wealth management needs of high and ultra-high net worth families across the nation and around the world.

Moderator Biography

RICHARD B. LEVIN

Richard is chair of the FinTech and Regulation Practice and was one of the first lawyers to focus on the regulation of blockchain and digital assets. He is considered a thought leader in the FinTech space. Richard brings his experience as a senior legal and compliance officer on Wall Street and in London to bear in advising clients on corporate, FinTech, securities, and regulatory issues. A problem-solver by nature, he has been advising FinTech clients on legal and regulatory issues since the start of electronic trading in the late 1990s. His practice focuses on helping financial services and technology clients identify and address regulatory issues as they build their businesses.

Richard's practice focuses on the representation of early stage and publicly traded companies in the FinTech space, including investment banks, broker-dealers, investment advisers, peer-to-peer lending platforms, digital currency trading platforms, alternative trading systems (ATSs), exchanges, and custodians. He represents these firms before the U.S. Securities and Exchange Commission (SEC), the U.S. Commodity Futures Trading Commission (CFTC), the Financial Industry Regulatory Authority (FINRA), the U.S. Department of the Treasury, Office of the Comptroller of the Currency (OCC), state regulators, and Congress. Richard has represented clients before regulators in Australia, Canada, France, Germany, Hong Kong, Ireland, Japan, Singapore, South Korea, and the United Kingdom. His current and past clients include leading national financial institutions, multinational financial services holding companies, leading firms in the FinTech space, and institutions engaging in global investment banking, investment management, securities, and other financial services with institutional clients.

Richard has been identified by Chambers and Partners as one of the leading lawyers in the Blockchain and Cryptocurrencies category since the inception of the category. He has been recognized by Chambers for his knowledge on regulatory matters, great relationships with regulators, for helping clients push the boundaries of the FinTech sector, and for his advice on matters such as broker-dealer licensing and alternative trading systems. Richard is routinely quoted by leading publications including Bloomberg, the New York Times, Reuters, and the Wall Street Journal and is a frequent speaker at conferences around the world on the regulation of FinTech, blockchain, and digital assets.

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