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Jessica L. Rich, Director
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: False Statements in the book, Asset Protection, and the Serious Adverse Consequences to the Public

Dear Ms. Rich:

Please be on notice that the book, Asset Protection, by Jay D. Adkisson and Christopher M. Riser (McGraw-Hill, 2004), contains several false and misleading statements and should be considered injurious to the public.

To compound the injury, Mr. Adkisson, in particular, holds himself out to be a knowledgeable, licensed professional (attorney) in the field of asset protection and a supposed "watch-dog" for the industry. Upon critical and proper review of the book, you will disagree, as do I. His assertions regarding the legalities of asset protection certainly qualify him as a master deceiver.

Not unlike Kevin Trudeau in his book on weight loss wherein he states that his weight loss plan is "easy", Mr. Adkisson asserts there are no rules certain in the setting up of a Revocable Living Trust (RLT), thus also making it "easy" to draft as an agreement between two parties.[1] However, the adverse consequences of following the advice and statements contained in Asset Protection are far greater and more serious than those committed by Mr. Trudeau. The overall master deception in this book profoundly affects the estate assets, and the lives and well-being of the family as well as future generations who become involved in the obsolete Probate process as a result of their RLT being fatally defective and void. Unless a consumer has prior and specific knowledge concerning the history and intricacies of various asset protection entities (including trusts), then he or she becomes a victim.

[1] (Kevin Trudeau was found guilty of contempt of court and is currently serving an unlimited sentence for his "fraud on the public.)

The following errors of commission and omission of Messrs. Adkisson and Riser in this book are as follows:

Count #1 Page 120, lines 1-5, gives a definition of a trust.

> "*A trust really is just shorthand for 'a trust relationship' and is little more than a legally recognizable agreement between two people that one will hold (be entrusted with) the assets of the other person for the benefit of someone*"

This definition shows the total lack of expertise dealing with trusts. This definition is for the old obsolete English and U.S. Common-Law trusts before U.S. statutory trust codes were enacted by the state legislatures. The old common-law trust was an agreement between the Grantor [Settlor(s)] and the trustee(s). The new modern statutory trust is only a declaration or manifestation of the Grantor(s) [Settlor(s)] which creates the trust. After the statutory trust is created, the Grantor(s) appoint the Trustee(s). The trustee(s) have nothing to do with the creation or definition of a statutory trust. Of course, it is true that a trustee(s) would have to agree to serve, but that fact does not create or define a statutory trust.

In addition, statutory trust codes specify the only methods of trust creation, which do not include "an agreement between the Grantor(s) and trustee(s)". Undoubtedly the trusts discussed here are entitled "Trust Agreement" and the first paragraph concerns some agreement between the Grantor(s) and the Trustee(s). This definition and trust instruments are, of course, a total fraud on clients and purchasers of the book.

Count #2 Page 124, lines 18-20, state that,

> "*Another problem with trusts used for asset protection is that, for the trust structure to work, actual control of assets must be totally ceded from the owner of the assets to a third-party trustee*".

It is difficult to understand what is really meant by this statement. If it means that the owner (Grantor) must give the control or legal title to a trustee(s) to have a valid trust, this is a true statement. If it is inferred that the Grantor can not be that third-party trustee for asset protection, this is a conflict with the teachings and rulings of the U.S. Supreme Court and other courts.

First, we need to clarify that there is a difference between considering this question from an income tax perspective versus a legal asset protection perspective. In order for a trust to be treated as a separate tax entity for IRS income tax purposes, there must be an adverse trustee other than the grantor being a trustee. But we are not considering that context here.

The U.S. Supreme Court considered the appointment of the Grantor(s) as the Trustee(s) where the legal title, control and possession of assets were transferred to the trustee to have the same legal effect as transferring the legal title control and possession to another person. Other cases have upheld this principle where a creditor is attempting to attach assets in a trust.

There are exceptions where the Grantor(s) are also the beneficiary(s) in some respect, but there is no logically reason or benefit of a Grantor becoming a beneficiary.

Count #3 Again, on page 125, lines 18-21, a false half-truth statement is given along with another false half-truth definition where it states:

"*Widely marketed revocable Living Trusts provide absolutely no asset protection benefits".*

Most revocable living trusts that are widely marketed do not provide asset protection, but this is not an absolute rule. The exception is where the Grantor(s) have not retained any beneficial interest or become beneficiaries. Again, if a Grantor(s) in a revocable living trust are trustee(s), there are no practical or legal reasons to become a beneficiary or retain beneficial interest.

In addition, another definition refers to one (1) arrangement or version of a revocable living trust which states:

"*A revocable living trust is simply a trust that a person for her own benefit while she is alive, with the assets of the trust passing to designed beneficiaries at death*".

Another legal arrangement or version to avoid probate and offer asset protection when the statute of limitations runs out for the Uniform Fraudulent Transfer Act is where the Grantor(s) becomes the Trustee(s) for the benefit of other persons as beneficiaries during the Grantor(s) lifetime and after death.

Count #4 Fourth and worst of all, the next error and master deception is a total misrepresentation of truth when on p.126, lines 4-6, it states that:

"…*revocable living trusts are revocable, meaning that the creditor can simply apply for an order of the court compelling the debtor to revoke the trust and thus take the assets back, where upon the assets are then accessible to creditors*".

Also, the same basic statements are made on p. 130, lines 4-7 where it is stated that:

"*If the grantor can reach the assets of the trust at any time, so can the grantor's creditors, since the creditor can simply ask the court to order the grantor to revoke the trust*."

Over One Hundred (100) years ago, The U.S. Supreme Court (Jones v. Clifton, 101 U.S. 225) ruled the opposite on this legal principle. The ruling and teaching of that case, which is the supreme law of the land, basically established that the grantor's right to revoke is not a property interest and a creditor can not attach the Grantor's right to revoke. These legal principles have been in effect up to date with numerous courts considering those same principles and affirming them. The only rare exception is where a state legislature passes a law or code where the creditors can request that a court order a grantor to revoke the assets. Our research has revealed only two (2) cases where a court has done so. The first was an Oklahoma case where

later that law or code was repealed. The second case is where an Alabama court ordered the Grantor to revoke some assets based on the Alabama code that allowed a creditor to request that the Grantor revoke the asset from his revocable trust. Apparently, the authors have chosen to take a rare-rare exception and make it an absolute rule, which is a total misrepresentation and deception that the book perpetrates on purchasers and readers, including the book publisher.

The truth is that the general rule that the Grantor's right to revoke a revocable living trust is not a property interest, and creditors can only attach a property interest; the Grantor's right to revoke cannot be used as a basis to attach trust assets. The rare-rare exception is only worth mentioning if you are sued in an Alabama court and the assets were transferred into a revocable living trust. The creditor can only ask the court to order the grantor to revoke the trust if there is a code that allows the creditor to ask, e.g. Alabama code.

Count #5 On p.135, lines 27-28, it states that:

"A *single beneficiary-trustee provides significantly less flexibility and protection*…"

Throughout the book, as stated here, they indicate that a trust can be created with a single beneficiary and trustee, both being the same person; but that is not the best arrangement. Again, this proves the lack the knowledge of the fundamental principles of the modern statutory trust or even the common-law trust. If a single or sole trustee is also the single or sole beneficiary, a trust is not created and the grantor holds the property as his own. Technically, there is no separation of legal title from equitable title of property. The Restatement of Trust 3d and State Statutory Trust Codes are very clear on this issue.

For example, the Texas Trust Code states:

"§112.034 Merger-(a) If a settler (Grantor) transfers both the legal title and all equitable interests in property to the same person or retains both legal title and all equitable interests in property in himself as both the sole trustee and sole beneficiary, a trust is not created and the transferee holds the property as his own." (Emphasis added)

Count #6 Back to the definition of a revocable living trust on p.125, lines 19-20, wherein it states:

"…A *revocable living trust is simply a trust that a person creates for her own benefit…"*

If a person creates a trust for her own benefit, then she is the grantor (settlor) and the beneficiary. Under the Texas Trust Code § 112.033—and it is believed that other states have enacted the same type of provisions—it provides that if grantor (settlor) is also the beneficiary in a revocable living trust, the trust is treated as an attempted testamentary disposition. In other words, the revocable living trust becomes a testamentary trust. A testamentary trust requires the estate to first go through a will and probate.

Sincerely,
Karl L. Dahlstrom
cc: McGraw-Hill