

PENN ATTORNEYS

TITLE ALERT

DATE: 2/11/08

RE: Title Alert 2008-02

PURE TRUSTS

In our world where the cost of living is skyrocketing, and tax rates are constantly on the rise, the pursuit of tax avoidance is bounded only by the schemer's imagination. One such "pursuit" is a device called a "Pure" Trust which is known among other names as a Patriot Trust, a Freedom Trust or a Constitutional Trust. If you read the proponents' propaganda, a "Pure" Trust can protect assets from judgments, creditors, the IRS, reduce or eliminate income taxes, avoid capital gains and protect your assets from all lawsuits...etc., etc., etc.

The problem is that this so-called trust is not a valid trust such as the kind usually created by a Settlor as an estate planning tool, nor is it an artificial entity that is legally created pursuant to state law like a corporation. The Internal Revenue Service discussed this type of trust in its article about Abusive Trust Tax Evasion Schemes. (See article: <http://www.irs.gov/businesses/small/article/0,,id=106535,00.html>). More information is available in their brochure entitled "Should your financial portfolio include too good to be true trusts?" as well as in excerpts of their abusive trust scheme prosecutions. Additionally, the IRS does not use the term "pure trust" in the Internal Revenue Code, and advises that whatever the name of an arrangement, the taxation of the entity must comply with the requirements of the Code, based on the economic reality of the arrangement and not its nomenclature. (See IRS notice number 97-24 in the notice archives at www.irs.gov). The notice goes on to provide that if the "pure trust" meets the definition of a trust, then it would be taxed under simple, complex or grantor trust rules in the Code. The conclusion that can be drawn from the IRS materials is that taxation cannot be avoided.

Underwriting guidelines

PURCHASE or MORTGAGE by "Pure" Trust:

- Penn Attorneys Title Insurance Co. **will not facilitate nor insure** any transaction where the **purchaser or mortgagor** is a Pure Trust.

SALE by "Pure" Trust:

- Penn Attorneys will insure the purchaser of premises where title was held in the name of a Pure Trust, but only when the Grantor includes signatures of all "Exchangers", "Trustees" and any beneficiaries identified in the Pure Trust Agreement, Abstract or Summary of Trust or Trust Declaration. Judgment searches and clearance of all results must be performed for all named Trustees, Exchangers and beneficiaries, as well as for the named "trust" entity. The 1099 must report the income of all Exchangers, and the sale proceeds must be made payable to all Exchangers.

As always, if you have any questions, please contact us.

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