

TENNESSEE INVESTMENT SERVICES TRUSTS (“TISTs”)

Effective July 1, 2007, a new Tennessee law will allow a settlor to transfer assets to an irrevocable trust of which the settlor is a discretionary beneficiary, and have the assets protected from the settlor’s future creditors.

The statute sets forth very specific requirements that must be met in order to obtain the benefit of the statute, including:

- (1) the trustee must be a Tennessee resident or authorized by Tennessee law to act as a trustee and subject to supervision by the Tennessee Department of Financial Institutions, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision;
- (2) at least some of the assets owned by the TIST must be held in Tennessee;
- (3) the Tennessee trustee must materially participate in the administration of the TIST; and
- (4) the settlor may not be the trustee.

Upon transferring assets to a TIST, the settlor is required to sign an affidavit which states that the transfer to the trust will not render the transferor insolvent, that the transferor does not intend to defraud a creditor by transferring assets to the trust, and that he does not have any pending or threatened court actions against him other than those identified in the affidavit. The affidavit must also state that the settlor does not contemplate filing for bankruptcy.

A TIST must be irrevocable. There are certain rights that the transferor is allowed to retain, including: (1) the power to veto a distribution from the trust; (2) a testamentary power to appoint the trust assets; (3) the right to receive income

from the trust; (4) the right to direct the investments of the trust; (5) the right to receive principal payments at the discretion of the trustee or another advisor; and (6) the right to remove and replace the trustee or other advisor.

A creditor who had a potential claim against the settlor prior to the transfer to the TIST may be able to set aside the transfer as a fraudulent conveyance. If a creditor does not attempt to set aside the transfer to the TIST within four years after the transfer to the trust, the creditor will be barred from attaching the property that was transferred to the TIST. A creditor will still be able to attach any property that is distributed from the TIST to the settlor; however, creditors would not be able to attach the assets retained inside the TIST.

A creditor is not allowed to sue the trustee of the TIST or any advisor involved in the counseling, drafting, preparation, execution or funding of a TIST.

The statute contains provisions which allow trusts that were previously established in other states to move to Tennessee and obtain the benefits of the statute as long as the trust complies with the requirements of the statute. This will facilitate the repatriation of numerous trusts established by Tennesseans with trustees located in other states.

It is not expected that TISTs will provide income or transfer tax benefits to Tennessee residents. However, they can be utilized by certain nonresidents of Tennessee to reduce state income taxes in their home states.