In re Kittrell, 2026 WL 2151539
(Bankr. D. Ariz. July 24, 2026)

August 2026

Trust Assets Included in Settlors' Bankruptcy Estate, Fraudulent Transfer, Special Power of Appointment to Appoint Assets To or For Settlors ("SPAT"), Ten-Year Lookback Under Bankruptcy Code

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August 25, 2026

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1. Brief Synopsis

In *Linscott v. Kittrell (In re Kittrell)*, 2026 WL 2151539 (Bankr. D. Ariz. July 24, 2026), the bankruptcy court applied Bankruptcy Code § 548(e)(1) and §541 to an irrevocable "Children's Trust" created and funded by Murphy and Barbara Kittrell. Although the Kittrells were not expressly named as current beneficiaries, they were the grantors and trustees, and they transferred to the trust their interests in entities associated with a highly valuable medical-marijuana business. The court concluded that the Children's Trust was a self-settled trust for purposes of § 548(e). Among other things, the Kittrells' son held a power under which he could add the Kittrells as beneficiaries, revoke the trust and distribute its assets to persons within a class that included the Kittrells, or transfer the assets to another trust that could be for their benefit. The court also relied heavily on the manner in which the trust was actually administered: the Kittrells continued to exercise substantial control over the trust-owned businesses and repeatedly treated trust assets as their own.

The court further found ample evidence of actual intent to hinder, delay, or defraud creditors. The transfers occurred while substantial judgments were outstanding, left the Kittrells without meaningful nonexempt assets, and were accompanied by admissions that creditor protection was an important purpose of the arrangement. The bankruptcy trustee was therefore able to invoke § 548(e)'s ten-year lookback period. The court also concluded that the trust assets are property of the bankruptcy estate under §541 of the Bankruptcy Code because the Kittrells retained and exercised complete control over and derived all benefits of the Children's Trust. The court awarded the bankruptcy trustee a $6.5 million judgment, together with pre- and post-judgment interest. A separate July 16, 2026 Bankruptcy Appellate Panel decision arising from the same bankruptcy affirmed the denial of the Kittrells' Chapter 7 discharge under § 727(a)(4)(A) because of knowing and fraudulent omissions concerning the Children's Trust and related entities from their bankruptcy disclosures.

2. Terrible Facts in *Kittrell*

Kittrell is an unusually strong "bad facts" case. The court was not confronting a carefully administered third-party trust in which the settlors happened to possess one arguably troublesome retained right. Rather, virtually every surrounding circumstance suggested that the formal separation between the Kittrells and the Children's Trust did not correspond with economic reality. The adverse facts included:

- The Children's Trust was created while the Kittrells were already confronting substantial creditor claims and judgments. The transfer of the business interests essentially left them without nonexempt assets from which those creditors could be paid.
- Murphy Kittrell testified that creditors were interfering with his business, and Barbara Kittrell testified that the trust was intended to protect assets from creditors whom she characterized as "thieves." The bankruptcy court later relied on the Kittrells' own testimony that the trust was created to hinder creditors. - The Kittrells were both the grantors and trustees of the Children's Trust.
- Although the children and grandchildren were the nominal beneficiaries, the trust apparently never made a distribution to any beneficiary. It had no separate bank account, maintained little or no conventional trust administration, and filed no separate tax returns; instead, the Kittrells treated the trust's income and losses as their own.
- After purportedly transferring the business interests to the Children's Trust, the Kittrells continued to hold themselves out as owners. Murphy represented himself as owner of trust-owned entities and pledged trust assets in connection with personal obligations.
- The Kittrells continued to use trust-related accounts and assets for personal purposes, including cash withdrawals and payment of personal expenses.

- The trust instrument permitted the Kittrells to hold trust property in their own names, lend to the trust, borrow from the trust, and exercise a substitution power over trust assets.
- Their son could exercise a power of appointment to add the Kittrells as beneficiaries, eliminate other beneficiaries, revoke the trust and direct its assets to a class that included the Kittrells, and, following a later amendment, transfer assets to another trust that could be created for the Kittrells.
- Shortly before bankruptcy, a $15 million business sale generated funds from which more than $11 million of selected obligations were paid, while the creditors who ultimately objected to discharge remained unpaid.
- In their bankruptcy schedules, the Kittrells identified themselves merely as settlors of the Children's Trust, asserted that their children were its sole beneficiaries and that it had "No value to Debtors," and failed to disclose their status as trustees and the full nature of their interests and control.
- The bankruptcy court found their testimony concerning the trusts "vague, inconsistent, and thus lacking in credibility."
- Accordingly, *Kittrell* should be read with appropriate caution before extracting broad conclusions from any one drafting provision. The court had a remarkable accumulation of evidence that the trust was intended to place assets beyond creditors while leaving the Kittrells with practical access to and control over those assets.

3. "SPATs" and the Son's Special Power of Appointment

A "special power of appointment trust," or SPAT, generally attempts to avoid characterization as a self-settled trust by not naming the settlor as a beneficiary. Instead, an independent third person is given a nonfiduciary power to appoint property to the settlor, add the settlor as a beneficiary, or appoint property to a separate trust for the settlor's benefit. The theory is that, unless and until the independent powerholder exercises the power, the settlor has no enforceable beneficial interest in the trust. Commentators have described SPATs or "hybrid DAPTs" as potentially offering greater protection than a conventional DAPT, particularly where the settlor is never actually added as a beneficiary and no trust assets are appointed for the settlor's benefit. *See e.g.,* Abigail O'Connor, Mitchell Gans & Jonathan Blattmachr, *SPATs: A Flexible Asset Protection Alternative to DAPTs*, Estate Planning (Feb. 2019).

Kittrell raises an important caution about that planning technique. The Kittrells' son could add as beneficiaries persons who were descendants of the grantors' parents—a class that included the Kittrells themselves—and could revoke the trust and distribute its assets to persons within that same class. Because of those provisions, the bankruptcy court treated the Kittrells as "contingent beneficiaries" under Arizona law and therefore satisfying the requirement of §548(e)(1) that the debtor be a beneficiary of the self-settled trust. That analysis, if applied broadly, creates a significant concern for SPAT planning: a court may conclude that the settlor's possibility of being added as a beneficiary is itself a present contingent beneficial interest, even though exercise rests entirely with another person. On the other hand, *Kittrell* need not be read as establishing that every SPAT necessarily fails for asset-protection purposes. The power in *Kittrell* was unusually expansive, and it existed against a background of pervasive settlor control, actual personal use of trust assets, creditor-avoidance admissions, and disregard of trust formalities. The better lesson is that SPAT planning should avoid giving the settlor any practical or implied control over the powerholder and should be administered consistently with the proposition that the settlor has no present right to trust benefits. *Kittrell* nevertheless provides creditors with a substantial argument that the "backdoor" itself may constitute the contingent beneficial interest that causes the trust to be treated as self-settled, at least for purposes of §548(e)(1) of the Bankruptcy Code.

4. Bankruptcy as a Particularly Powerful Creditor Remedy Against Trusts

Kittrell is also a reminder that bankruptcy can dramatically change the asset-protection analysis. Section 548(e)(1) of the Bankruptcy Code gives a bankruptcy trustee the power to avoid a transfer made within ten years before the bankruptcy petition if the transfer was made to a self-settled trust or "similar device," the debtor is a beneficiary, and the transfer was made with actual intent to hinder, delay, or defraud an existing or subsequently arising creditor. That federal ten-year reachback can be far more formidable than the limitation periods that normally apply under state fraudulent-transfer statutes or state DAPT statutes. Even if the court had not treated the trust as a self-settled trust because of the "contingent beneficial interest" held by the Kittrells, it might have treated it as a "similar device." The importance of having an "old and cold" trust created well before creditor problems arise is especially important in a bankruptcy proceeding.

Bankruptcy also presents additional dangers beyond §548(e): as the separate Kittrell discharge litigation illustrates, inadequate or misleading disclosure of trust interests, powers, entities, or transactions can result in denial of the debtor's entire discharge under §727. Thus, even an asset-protection structure that may present substantial obstacles to an individual creditor outside bankruptcy can become much more vulnerable once a bankruptcy trustee obtains the Code's investigatory and avoidance powers.

5. Substitution Power

Another provision mentioned in *Kittrell* was Murphy Kittrell's power to substitute assets. The Children's Trust appointed Murphy, individually and in a nonfiduciary capacity under § 675(4)(C), as "Substitutor," with authority, without the approval or consent of the trustee or any other person, to acquire trust assets by substituting property of equivalent value. The Bankruptcy Appellate Panel specifically observed that the substitution power "clearly provides a direct benefit solely to Murphy Kittrell" and treated it as further evidence contradicting the contention that the Kittrells had no beneficial interest in the Children's Trust.

A substitution power is, of course, a familiar grantor-trust planning provision, and *Kittrell* should not be read as suggesting that the mere existence of a properly structured §675(4)(C) substitution power invariably destroys creditor protection. But context matters. Here, the power required no trustee consent and appeared in a trust in which the settlors already exercised extraordinary practical dominion over the assets. In that setting, the substitution power became one more piece of evidence that the supposed separation between the Kittrells and the trust property was largely formal rather than substantive.

6. Cumulative Effects of Bad Facts

For asset-protection planning, *Kittrell* counsels particular care before combining a SPAT-type "backdoor," a broad nonfiduciary substitution power, settlor trusteeship, borrowing rights, and continued operational control over trust-owned assets. The cumulative effect of retained powers and actual conduct may be much more damaging than any one provision considered in isolation.

7. Resource

For further discussion of planning considerations, see Jay Adkisson, *Children's Trust Held to Be Self-Settled Trust as to Creditors in Kittrell*, LEIMBERG ASSET PROTECTION NEWSLETTER #459 (Aug. 24, 2026).