

Add spendthrift language to a trust to safeguard assets

Published on April 11, 2019

Protecting assets from creditors is a critical aspect of estate planning, but you need to think about more than just your own creditors: You also need to consider your heirs' creditors. Adding spendthrift language to a trust benefiting your heirs can help safeguard assets.

Spendthrift language explained

Despite its name, the purpose of a spendthrift trust isn't just to protect profligate heirs from themselves. Although that's one use for this trust type, even the most financially responsible heirs can be exposed to frivolous lawsuits, dishonest business partners or unscrupulous creditors. A properly designed spendthrift trust can protect assets against such attacks.

In addition, it can protect your loved ones if the relationship changes. If one of your children divorces, your child's spouse generally can't claim a share of the trust property in the divorce settlement.

Furthermore, if your child predeceases his or her spouse, the spouse generally is entitled by law to a significant portion of your child's estate, including property you left the child outright. In some cases, that may be a desirable outcome. But in others, such as second marriages when there are children from a prior marriage, a spendthrift trust can prevent your child's inheritance from ending up in the hands of his or her spouse rather than in those of your grandchildren.

A variety of trusts can be spendthrift trusts. It's just a matter of including a spendthrift clause, which restricts a beneficiary's ability to assign or transfer his or her interest in the trust and restricts the rights of creditors to reach the trust assets.

Additional considerations

It's important to recognize that the protection offered by a spendthrift trust isn't absolute. Depending on applicable law, it may be possible for government agencies to reach the trust assets — to satisfy a tax obligation, for example.

Generally, the more discretion you give the trustee over distributions from the trust, the greater the protection against creditors' claims. If the trust requires the trustee to make distributions for a beneficiary's support, for example, a court may rule that a creditor can reach the trust assets to satisfy support-related debts. For increased protection, it's preferable to give the trustee full discretion over whether and when to make distributions.

Protect wealth after transfer

Protecting your wealth after you've transferred it to your family is just as important as other estate planning strategies such as reducing tax liability on the transfer. One way to do this is to include spendthrift language in a trust. Please contact us to learn whether a spendthrift trust is right for your estate plan.

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