Fortify your assets against creditors with a trust

Published on July 23, 2020

You may think of trusts as estate planning tools — vehicles for reducing taxes after your death. While trusts can certainly fill that role, they're also useful for protecting assets, both now and later. After all, the better protected your assets are, the more you'll have to pass on to loved ones.

Creditors, former business partners, ex-spouses, "spendthrift" children and tax agencies can all pose risks. Here's how trusts defend against asset protection challenges.

Tell creditors "hands off"

To protect assets, your trust must own them and be *irrevocable*. This means that you, as the grantor, generally can't modify or terminate the trust after it has been established. (A "revocable trust," on the other hand, allows the grantor to make modifications.) Once you transfer assets into an irrevocable trust, you've effectively removed your rights of ownership to the assets. Because the property is no longer yours, it's unavailable to satisfy claims against you.

It's important to note that placing assets in a trust won't allow you to sidestep responsibility for debts or claims that are outstanding at the time you fund the trust (known as a fraudulent conveyance or transfer). There may also be a substantial "look-back" period that could eliminate the protection your trust would otherwise provide, as well as other restrictions.

Build a fence

If you're concerned about what will happen to your assets after they pass to the next generation, you may want to consider the defensive features of a "spendthrift" trust. Despite the name, a spendthrift trust does more than protect your heirs from themselves. It can protect your family's assets against dishonest business partners and unscrupulous creditors. It also can protect loved ones in the event of relationship changes. For example, if your son divorces, his spouse generally won't be able to claim a share of the trust property in the divorce settlement.

Several trust types can be designated a spendthrift trust — you just need to add a spendthrift clause to the trust document. Such a clause restricts a beneficiary's ability to assign or transfer his or her interests in the trust, and it restricts the rights of creditors to reach the trust assets, as allowed by law.

Trustees play a role in keeping your trust safe. If a trustee is required to make distributions for a beneficiary's support, a court may rule that a creditor can reach trust assets to satisfy support-related debts. So, for increased protection, consider giving your trustee full discretion over whether and when to make distributions. You'll need to balance the potentially competing objectives of having the access you want and preventing creditors and others from having access.

Make asset protection a priority

If securing your assets is a priority — and it should be — please talk to us about whether a trust can provide the protection you need. There may also be other ways to help shelter wealth — for example, maximizing your use of qualified retirement plans.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com