



Alaska Asset Protection Trusts

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Today more and more lawsuits are being filed, new theories of liability are being developed, and you are more likely to have a jury award punitive damages now than in the past. Asset protection planning is not a new concept, but is now accepted as a necessary objective for you if you own property or a business you want to protect against unexpected risks.

Under federal law, you have some degree of asset protection, as any retirement plan governed by the Employee Retirement Income Security Act of 1994 (ERISA) is exempt from creditors. Individual retirement

accounts (IRAs) are protected if necessary to support the owner or his or her dependents. State law may offer additional protections and business owners may limit personal liability by creating business entities, but you must consider that in some cases the courts have “pierced the corporate veil.”

POTENTIAL LIABILITY

Some liability comes with the profession; doctors, lawyers, architects, and accountants are targets. If you are an employer, you are liable for the actions of your employees. Accidents happen and you may be subject to claims arising from a company vehicle or your personal automobile. If you personally guarantee a loan to your company, you are personally liable. When you own real estate, as an individual or as a business owner, you face a number of risks.

Your concern for family members may also create the urgency for asset protection planning. As parents, you may plan to protect your young children until they reach a certain age. Trust provisions which restrict your children’s access to their trust funds also protect those trust assets from the claims of your children’s creditors. You can plan to protect your children from a divorcing spouse by planning your revocable living trust with limitations on distributions to your children and grandchildren. Your estate planning attorney may advise you about asset protection planning for yourself and your loved ones.

ALASKA’S BENEFITS

In 1997, Alaska passed new law authorizing domestic self-settled asset protection

trusts (Alaska Trusts). Alaska continues to pass laws protecting individuals, families, and family business entities. A few other states have also passed laws permitting domestic asset protection trusts in response to many American lawyers and clients being uncomfortable with offshore trusts and the laws of a foreign country. Understanding the opportunity to protect assets from creditors, but reluctant to avail themselves of the friendly foreign jurisdiction offshore, a number of people have chosen Alaska as the situs for their asset protection trusts and family limited liability companies.

Unless the transfer of assets to the Alaska Trust is intended to defraud known creditors, or make you insolvent, your assets in your Alaska Trust are not subject to the claims of your creditors.

CREDITOR PROTECTION

Alaska law prohibits all creditors from attaching trust property before distributions to a beneficiary. This includes claims of tort creditors and ex-spouses for alimony or child support. Further, Alaska provides that a beneficiary's interest in a trust is not property subject to division in a divorce or dissolution. An Alaska Trust is an irrevocable trust which allows the grantor to transfer assets to his trust and to be a beneficiary to whom the trustee can distribute trust property. If the trust is not obligated to distribute trust assets to the grantor/beneficiary, the assets will not be subject to his or her creditors' claims.

Before you set up your Alaska Trust, you must sign an "Affidavit of Solvency" and plan with your attorney which assets are to be contributed to your Alaska Trust. A "rule of thumb" among estate planning professionals is that no more than 50% of the grantor's net worth should be contributed to your Alaska Trust. An Alaska Trust may replace a pre-nuptial agreement, may be used for estate freezes, and may be a grantor or non-grantor trust. You may also be able to take advantage of no state income tax assessed on your Alaska Trust.

ALASKA REQUIREMENTS

A trust will qualify as an Alaska Trust if some or all of the trust assets are deposited in Alaska. Part or all of the trust administration must take place in Alaska. At least one Trustee must be an Alaska resident or an Alaska-headquartered bank or trust company. The duties of an Alaska trustee include maintaining books and records of the Alaska Trust, and preparing or arranging for the preparation of trust tax returns.

In conclusion, creditors have made claims against assets held in domestic asset protection trusts, but informally, trustees say these claims have been settled in favor of the grantor. No case has been decided, so the effectiveness of an onshore asset protection trust is not absolute. Your assets may be better protected under the jurisdiction of Alaska in an Alaska Trust.

Ellen Gay Moser counsels individuals and families to: Protect their assets; exit their business; provide for loved ones and obtain peace of mind. Her mission is to “Protect Family Values for Generations.”