

Settlement Services

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ASSET PROTECTION 101

WHAT IS ESTATE PLANNING?

Estate Planning is simply a name for the process of transferring property and assets from one generation to another. An “Estate” is the total property and assets owned by an individual or couple prior to distribution through a Will or Trust.

Many people assume that “Estate Planning” is only for the rich, but this is a big misconception. Estate Planning is for everyone; there are no minimum asset requirements. Many people do not think that they have enough assets to justify estate planning, but if they have *ANY* property or assets, there are estate planning concerns. Planning is especially important if there are minor children.

WHY SHOULD I DO MY ESTATE PLANNING NOW?

Most people put off estate planning because it involves more than listing what assets are owned and who is to receive those assets when someone passes away. Estate planning involves attitudes and feelings about death, property ownership, business arrangements, marriage and family relationships. Adult children will often put off talking with their parents about their estate because they do not want to appear greedy, or because they cannot imagine a time without their parents. Parents may also avoid talking to their adult children about estate planning because they do not want to

hurt feelings, or they truly are not aware of all the options that are available to them. Although it may be uncomfortable talking about these things, it is worth spending some time and money to avoid the confusion, delay, expense and quarreling that is almost sure to occur if someone dies without a plan. If a plan is not made, state law will decide what happens to the estate, regardless of what the deceased may have intended.

WHEN SHOULD I START?

The best time to start estate planning is NOW...before it is too late! With estate planning there is no second chance. No one likes to think about their own mortality or the possibility of becoming incapacitated. This is exactly why so many families are caught off guard and unprepared when incapacity or death strikes. If there are assets, including bank accounts, brokerage accounts, life insurance, retirement accounts, minor children, or equity in your home, now is the time to start planning.

QUESTIONS?

Should you have any questions or concerns, please contact Settlement Services at 608.516.1956 or email us at: agapit@gmail.com.



DO I NEED AN IRREVOCABLE ASSET PROTECTION TRUST?

Q&A

ASSET PROTECTION TRUST

What is an Asset Protection Trust?

An Asset Protection Trust is a legal document that allows an individual or couple to give up personal ownership of real property and/or assets (such as a home, real estate, bank accounts, certificates of deposit, securities, life insurance, stocks, bonds, etc.) and transfer them into the legal ownership of the trust. This type of trust also allows the grantors (the individual or couple setting up the trust) to decide who will manage their assets, and when, where and how the assets will be distributed.

If an Asset Protection Trust is set up correctly and all of the property and assets are properly transferred to the trust it will provide the following benefits: Provide liability protection, avoid probate entirely; distribute property and assets to the beneficiaries as specified in the trust; and save money in federal estate tax and capital gains taxes.

Who will be in charge of my assets in an Asset Protection Trust?

The trustee handles the business affairs and distribution of the estate during the grantors life and after the grantors death. The trustee could be one or more people and is usually a trusted friend or family member. The trustee will manage the assets in the trust during the lifetime of the grantors. After death, the trustee will distribute the assets to the named beneficiaries in the trust. Before selecting a trustee, the responsibilities need to be discussed with the individual or couple to see if they are willing and able to perform these duties. It is also a good idea to name a successor trustee if, for any reason, the first choice cannot serve.

Can I control where my assets go in an Asset Protection Trust?

One huge advantage of an Asset Protection Trust is the control that the grantors have on when, where and how the assets are to be distributed. For example: If a John and Jane Doe do not want their beneficiaries receiving an outright distribution of the assets until they reached the age of 25, this could be stipulated in a Trust. This does not mean that the beneficiaries cannot use the money until they are 25, it simply means that the trustee(s) will be managing those assets until the beneficiaries reach the age of 25. Prior to reaching the age of 25, the assets may be used for health, education, maintenance and support.

In a Trust, the beneficiaries are the people and/or organizations to which the assets are left. Most people have a pretty good idea of who their direct beneficiaries will be. Beneficiaries may be children, grandchildren, other family members, friends, charities, organizations, etc. Couples in second, or subsequent marriages may face more complicated decisions if there are children from a prior marriage.

Do Asset Protection Trusts offer liability protection?

Yes! Because the trust is irrevocable, and because the grantors are transferring assets to the trust at a time and in a manner that is not a fraudulent transfer, creditors have no claim against the trust assets. Additionally, the trust is not filed anywhere, so creditors cannot find this structure through a search of public records under the grantor's name.

Because the grantors have no ownership, the assets are not included among their assets for purposes of bankruptcy, federal tax liens, Medicaid eligibility, or any other purpose. Note that every state has their own Medicaid eligibility requirements. Please check with your state's eligibility requirements.

The asset protection is based on legal principles that are well established in all fifty states, and have not changed for hundreds of years.

What type of assets can an Asset Protection Trust own?

This structure can own almost any type of asset. Qualified assets "tax deferred assets" such as a 401k or IRA cannot be transferred into an Asset Protection Trust; however, most qualified assets already have some liability protection.

Are assets in an Asset Protection Trust included on my personal financial statements?

Because the grantors have no ownership in the trust, their assets are not included on their personal financial statements or in any disclosure of their assets.

Q&A

ASSET PROTECTION TRUST

(CONTINUED)

What is probate and does an Asset Protection Trust avoid probate?

Probate is the legal process to determine who should receive a person's property and assets at death. It is the only way to legally change the title of property when the owner has passed away. Probate operates according to state law and can be a complicated and expensive process. The AARP estimates that the average probate cost is 3-8% of a person's estate and lasts about nine months to two years.

Not all assets a person owns are subject to probate. The following assets are not subject to probate as long as the named beneficiary is alive, over the age of eighteen (18) and competent: bank accounts, brokerage accounts, life insurance policies and retirement accounts (Pensions, 401(k), IRA (Individual Retirement Accounts), Annuities, etc.). However, many assets such as real property, stocks, and accounts with improper or incomplete beneficiary designations may be subject to probate.

If an Asset Protection Trust is set up correctly and all of the property and assets are properly transferred to the trust...it will avoid probate.

Can changes be made to an Asset Protection Trust?

Because of the special power of appointment included in the trust, the terms, conditions, and beneficiaries can be changed at any time.

Is a separate Tax ID Number required?

This structure creates no extra tax returns or income tax problems and there is no requirement for a separate Tax ID Number – it is income tax neutral.

If I transfer my primary residence into an Asset Protection Trust, can I still claim it as my primary residence if I sell it?

The grantors can put their primary residence in the trust without losing any of the tax benefits of home ownership. If they do put their primary residence in the trust, they should pay rent to live in the home. The rent is not deductible to them or income to the trust because for tax purposes, the entity is ignored. The rent explains how they can live in a home they don't own.

Can I gift assets to an Asset Protection Trust?

Because gifts to the trust are "incomplete" for gift tax purposes, the client can transfer unlimited amounts to the trust without gift tax implications.

Because gifts to the trust are "incomplete" for gift tax purposes, the client's estate receives a step-up in basis to the fair market value on the date of the client's death.

Can I transfer my shares of an S corporation to an Asset Protection Trust?

The trust is an eligible shareholder of an S corporation.

Can an Asset Protection Trust continue after death?

After the client's death, this structure can continue to provide asset protection for the client's beneficiaries as long as they want to keep it around.

Q&A

OTHER DOCUMENTS

What is Schedule A?

Schedule A is an inventory of assets and set of instruction letters that indicate how to transfer property and assets to the Trust. Once the property and assets have been properly transferred to the Trust, verification and confirmation of the transfers should be kept in Schedule A. When the grantors pass away, the trustees will use Schedule A to quickly locate assets and property. It is very important to keep Schedule A current and up to date.

What is a Pour-Over Will?

Even when somebody creates a Asset Protection Trust, they will still need a "Pour-Over" Will. The Pour-Over Will is a document that states that if something was left out of the Trust, it should be "Poured Over" and distributed through the Trust. For example: John and Jane Doe create a Trust and transfer all their property and assets to the Trust using the instruction letters in Schedule A. Five years down the road they decide to purchase a second home. When they purchase the home, they purchase the property as joint tenants and forget to transfer the property to the Trust. When both John and Jane Doe pass away, the property that was left out of the Trust would have to go through probate before it could be distributed. The Pour-Over Will would help in the probate process to make sure that the property was distributed through the Trust. To avoid probate, it is important to transfer ALL assets into the Trust.

What happens if I am incapacitated?

Incapacity is a lack of physical or mental abilities that results in a person's inability to manage his or her own personal care, property or finances. A thorough estate plan should take this possibility into account. It is very important to plan for incapacity by preparing a few simple legal documents to ensure that medical and financial wishes are carried out if an individual is unable to speak and act on their own behalf. These legal documents are a Living Will, Medical Power of Attorney and Durable Power of Attorney.

What is a Living Will?

A Living Will is a written statement of wishes concerning the use of extraordinary medical treatment or artificial nutrition and fluids to keep an individual alive if there is no reasonable hope of recovery from a terminal illness or accident. A Living Will gives medical personnel permission to withhold or withdraw life support systems that will merely delay death. If an individual does not have a Living Will, their family is left with the decision and they may not be able to agree on what action to take. By having a Living Will, it allows the individual to make the decision.

What is a Medical Power of Attorney?

A Medical Power of Attorney is a document that allows someone else to make medical decisions for an individual if they cannot make them on their own behalf. The appointed health care agent may be any competent person who is at least eighteen (18) years old and not providing paid health care to the individual. This person is usually a trusted family member or friend. The Medical Power of Attorney becomes effective when an individual is unable to communicate their wishes due to any illness or injury.

What is a Durable Power of Attorney?

A Durable Power of Attorney is a document that allows someone else to make financial decisions for an individual if they cannot make them on their own behalf. The appointed agent called the attorney-in-fact may be any competent person who is at least eighteen (18) years old. This person is usually a trusted family member or friend. The Durable Power of Attorney becomes effective when an individual is unable to manage their own legal or financial affairs, as determined in writing by two unrelated physicians.

Settlement Services

QUESTIONS?

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