

ESTATE PLANNING NEWSLETTER

IF YOU ARE CONCERNED ABOUT PROTECTING YOUR ASSETS FROM CREDITORS, YOU SHOULD READ THIS ARTICLE!

TENNESSEE ENACTS SELF-SETTLED ASSET PROTECTION TRUSTS

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On May 10, 2007, Governor Phil Bredesen signed the new "Tennessee Investment Services Act," which will become effective July 1, 2007. With the passing of this law, Tennessee has become one of a few states in the nation to enact legislation permitting the creation of self-created (self-settled) asset protection trusts.

Before this new law, if an individual created a trust under which he is a beneficiary, the assets of the trust were subject to the claims of his creditors. As a result, an individual could not protect his wealth from creditors and lawsuits while retaining control of his assets. The new law allows this protection by permitting the individual to create a self-settled asset protection trust referred to as an "Investment Services Trust" (IST).

An IST is an irrevocable trust into which an individual transfers assets while retaining the fol-

lowing rights: ability to direct the investment of the IST assets; receive distributions of principal upon the discretion of the Trustee; live in a home owned by the trust; veto distributions to any other permissible beneficiaries; direct the distribution of the trust assets upon death to any one or more persons; remove the Trustee and other trust advisors and appoint their successors under certain provisions. The settlor may not serve as the Trustee of the IST.

The Trustee must be either an individual residing in Tennessee or a corporate Trustee who is authorized to conduct business in Tennessee. At least a portion of the assets of the IST must be administered in Tennessee. At the creation of an IST, the settlor must provide an affidavit stating under oath that he does not intend to defraud a creditor and that he does not have

any pending or threatened court action against him.

There is a four year "look back" rule that applies to assets transferred to the trust. After the four year period has passed, the settlor's creditors cannot seize the assets of the IST to satisfy claims against the settlor.

The new Tennessee Investment Services Act provides an asset protection opportunity for individuals who are concerned about the loss of their assets due to unforeseen creditors. An IST presents a unique solution to those who wish to protect their assets during their lifetime while still retaining the ability to manage those assets and benefit from them.

If you are interested in protecting your assets from future creditors, please contact our office to schedule an appointment to discuss the use of an IST in your estate plan.

DYNASTY TRUSTS

The "Tennessee Investment Services Act" also extends the period for which a trust can exist in Tennessee from 90 years to 360 years. This will permit an individual to place property in trust to ensure assets are available for the benefit of not only his children and grandchildren but also for the next ten generations of his descendants.

Many individuals leave their children (or other beneficiaries) their inheritances directly, or outright. We often recommend that the assets to be distributed to a beneficiary be held in a trust designed as Asset and Divorce Protection Trusts that may protect them for their lifetimes. The assets in these trusts may be protected from lawsuits, divorce proceedings, creditors, bankruptcy and other predators. The Trustee of each trust can distribute assets for the beneficiary's health, education, maintenance and sup-

port. In some cases, the beneficiary may serve alone as Trustee of his or her own trust share or an independent Trustee can be selected for the management and administration of the inheritance.

In addition, a portion, or possibly all, of the assets of a beneficiary's trust share can pass free of death taxes to the next generation, saving up to 55% in estate taxes at the death of a beneficiary. In other words, an individual will be able to skip a generation of estate taxes on the transfer of wealth between children and grandchildren.

When these Asset and Divorce Protection Trusts are structured to pass in trust to descendants of multiple generations upon the death of the individual, they are commonly known as "Dynasty Trusts." Structuring the inheritance of all descendants (generation after generation) benefits one generation of family members after an-

other without being taxed in any family member's estate. Wealth that is never subject to death tax will obviously grow far more than wealth that is taxed at every generation, especially when that wealth is also protected from creditors and failed marriages. Dynasty Trusts are a golden opportunity for most families. By planning for children, grandchildren and even great-grandchildren, one can give his family many generations of tax-protected, creditor-protected and failed marriage-protected wealth.

In the past, Dynasty Trusts were only permitted to last 90 years in Tennessee. The new law now provides that these types of trusts can last for 360 years.

If you are interested in preserving your beneficiaries' inheritance by using Dynasty Trusts, please call our office to schedule an appointment.



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