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Estate Planning | Wills & Trusts

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Asset Protection Through Estate Planning

It is a natural inclination to want to protect the assets that you have worked hard to obtain. There are many levels of asset protection and the proper method must be determined depending not only on the type of asset, but also on the possible source, timing and likelihood of a threat. However, the key to asset protection, much like estate planning in general, is that it must be put into place well before it is needed, because by the time it is needed, it is often too late.

- *The benefits of asset protection must be considered when you are building wealth, not when you need to protect it.*
- *Transfers of property that occur specifically for the purposes of hindering, delaying or defrauding creditors are considered fraudulent.*
- *It is always important to consult with an experienced attorney when considering your asset protection options.*

Transfers of property that occur specifically for the purposes of hindering, delaying or defrauding creditors will be considered fraudulent. There are many factors that a court will consider when determining whether a transfer was fraudulent, but the best way to avoid such a determination is to protect your assets before the claim arises.

Titling Your Home

One of the simplest ways to protect your most important asset—your home—is to make sure that it is titled correctly. Illinois, along with many other states, offers a form of ownership referred to as "Tenancy by the Entirety." There are several requirements that must be met in order for a home to be titled as Tenancy by the Entirety, including specific language in the deed itself.

For most couples, this is the preferable method of title on the primary residence because it offers the greatest asset protection against a forced sale of the home. However, in certain circumstances, titling the home another way, such as in trust, may be preferable, so it is always important to consult with an experienced attorney when considering the options for titling your home.

Revocable Living Trusts

Assets held in a Revocable Living Trust—a trust of which the grantor is the trustee and retains the power to amend or revoke the trust—will be treated as owned by the grantor. However, a properly drafted Revocable Living Trust can offer significant asset protection to the beneficiary from his or her creditors.

By placing a child's inheritance in trust rather than giving it to him or her outright, the inheritance can be protected from the child's creditors and divorce while it is held in trust. Additionally, implementing withdrawal limitations, such as a requirement that the beneficiary be employed, can keep your children motivated.

Limited Liability Companies

When an individual owns an asset, he or she is liable for any debts or claims against the asset, exposing personal assets to creditors. A limited liability company (LLC) is a corporate entity which limits the liability of an owner to his or her investment in the LLC. LLCs can be ideal instruments for operating businesses or income-producing assets, such as rental property.

By separating the business assets from personal assets, the owner can protect the personal assets from liabilities of the business. Additionally, depending on the structure and ownership of the LLC, the business can serve as a deterrent against personal creditors of the owner.

Irrevocable Trusts

In contrast to a Revocable Living Trust, an Irrevocable Trust is a trust that cannot be amended or revoked by anyone, including the grantor. It is therefore an ideal instrument for an individual to make a present interest gift while also providing the terms and purposes for which such gifts may be used.

Irrevocable Trusts are commonly used to hold life insurance policies on the life of the grantor or his or her spouse. Since the grantor may not amend the terms of the trust, is not a beneficiary of the trust and may not withdraw the trust assets, such assets are not considered the grantor's property and are thus protected from his or her creditors.

Other common Irrevocable Trusts include Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs) and Dynasty Trusts.

Domestic Asset Protection Trusts

Although Domestic Asset Protection Trusts have come under scrutiny recently, they remain a valuable tool to protect the assets of a grantor from his or her creditors.

In states that offer the Domestic Asset Protection Trust option, there are also laws providing a statute of limitations or look-back period for transfers to a Domestic Asset

Protection Trust, typically two to four years. Additionally, the statute of limitations for bankruptcy protection for such trusts is ten years. Thus, this arrangement must be undertaken very carefully and well before any threat from a creditor emerges.

As mentioned above, the benefits of asset protection must be considered when you are building wealth, not when you need to protect it, in order for it to be effective. There are many threats against your assets. By discussing your assets, circumstances and potential threats with an experienced estate planning attorney, you can determine the techniques that best suit your needs to protect your assets for you and your family.

Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Trust and Estate Administration and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish has served as Vice President of Professional Development for the Indian American Bar Association and board member of the Young Professionals of Evanston.

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