# A trust arrangement to protect your assets

As you plan for your offspring, what is the best approach for protecting the legacies that you will pass on to them? Outright inheritances may be inappropriate for those with poor financial judgment; or who might face a divorce at some time in the future; or who may have a history of addiction or inappropriate behavior. Then, too, professionals such as doctors and attorneys, who face the threat of financially crushing malpractice suits, may be looking for ways to protect themselves.

There are pros and cons to each of the various asset protection strategies available. Seek professional advice from a trust professional and other advisors before taking any irrevocable steps. Here is a summary of several approaches that may help you protect your assets.

• A *spendthrift trust* includes a provision that prevents a beneficiary from demanding distributions either of income or principal, or from transferring any interest that he or she may have in the trust. The trustee may be given wide latitude in refusing distributions that are reachable by creditors or when there is concern that the distributions might be used unwisely. (State laws recognize the rights of some creditors to reach trust assets.)

• A *discretionary trust* permits the trustee to make (or *not* make) distributions to a beneficiary. When there is more than one beneficiary, the trustee can be given authority to make unequal distributions from the trust. A discretionary trust often is established for disabled beneficiaries as a means to preserve benefits from government entitlement programs by limiting the trust's distributions to supplemental rather than support needs.

• A *support trust* is designed to provide a beneficiary with sufficient income from the trust in order to meet his or her basic needs and to live comfortably as well. The standards for making the distributions are predetermined in a written trust agreement. Commonly, distributions are permitted for living expenses, education, medical expenses and other similar requirements.

• A *domestic* or *foreign asset protection trust* (also referred to as a self-settled or offshore trust) is created for the sole benefit of the individual establishing the trust, chiefly as a means to prevent creditors from reaching the assets placed in the trust. Although these trusts have gained in popularity in recent years, changes to the Bankruptcy Code and successful attacks in the courts may have removed much of the shield created by these trusts.

Although still pitched aggressively by some promoters, extreme caution is recommended in connection with these arrangements.

• A *tax-qualified retirement plan* or *IRA* is not, usually, thought of as an asset protection trust. However, to some extent, they operate in that manner. Generally, assets that are held in a retirement plan account or in an IRA may not be attached by creditors while they remain in the plan or IRA.

Finally, it's worth mentioning that certain assets may be afforded protection by other mechanisms. For example, some states' homestead laws protect a family home from creditors. Spouses may be able to protect their home (or in some states, other assets) through joint tenancy. Limited partnerships and limited liability companies may protect the assets of the entity from the creditors of a partner or member.

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Any developments occurring after January 1, 2010, are not reflected in this article.