

The “Daily Plan-It™”

Davis Schilken, PC

Volume 14, Issue 22

11/3/2011

Another State Sees the Value in Allowing Asset Protection Trusts

Hawaii recently embraced Asset Protection Trusts, which can help professionals in high-risk jobs protect assets from lawsuits and predatory creditors.

Asset Protection Trusts can also be used to help elderly clients qualify for Medicaid to cover the enormous costs of long-term care.

Hawaiian lawmakers introduced this Trust last year. Initially, the cost of designing such a Trust discouraged many potential clients. But after going back to the drawing board, a revised (and far less expensive) version of the Trust debuted after the legislature heard complaints by estate advisers.

Can My Client Afford This?

Probably. This less expensive version of the Trust is both a Dynasty Trust that lets someone preserve assets over decades and beyond, and an Asset Protection Trust. It is very flexible, so we can really do a lot with it.

Hawaiian lawmakers lifted a 1 percent tax on the amount of money used to create the Trust, and on any additional funds that went into it. They lifted a rule that said only 25 percent of one's net worth could go into it. And, they did away with a restriction that said a Trust could only hold cash or marketable securities.

Many states allow Dynasty Trusts, but the same can't be said of Asset Protection Trusts. Only about a dozen other states already allow Asset Protection Trusts, which have attracted a lot of interest since Alaska enacted the first asset protection law in 1997.

What Can Go in This Trust?

Liquid assets work best, but other kinds can go in, too. For example, closely held business interests, private equity and even real estate can work.

These Trusts have been criticized in the past as a way to let wealthy people shield themselves unfairly. But there is a trend to accepting the trusts now. That will only speed up if a few big states come on board in the

next few years.

Use an Experienced Asset Protection Attorney

Despite the growth, an element of uncertainty remains around these Trusts. State laws haven't been tested through court challenges. So, someone who assumes that a Trust will be ironclad may discover, when laws evolve through litigation, that creditors who have gotten judgments in other states are able to reach the assets after all.

Your clients should talk to an experienced estate planning attorney who fully understands how to draft such a complex Trust and has experience doing so.

As always, I hope this article has helped you and your clients. If you have a specific case or concern you'd like to discuss, please call our office.

DAVIS SCHILKEN, PC — LAW OFFICES —

Davis Schilken, PC is a law firm serving Colorado by providing experience, leadership and innovative solutions through a practical, counseling-oriented approach. By taking time to understand your needs, we will help secure the best quality of life today, the highest standard of care tomorrow and the greatest benefits for your loved ones in the future.

Keith L. Davis, JD, MBA, LLM, CPA
Francis P. Brown, JD, MIM, LLM
Janine A. Guillen, JD, MBA, LLM, RN
Bruce A. Schilken, JD, CPA
Richard W. Kautt, JD, MPA
Gordon E. Schieman, JD

523 Park Point Drive, Suite 350
Golden, CO 80401
Phone: 303-670-9855 Fax: 303-670-5381

925 W. Kenyon Ave., Unit 1
Englewood, CO 80110
Telephone: 303-670-9855 Fax: 303-762-0014