Estate Planning Alert

March 8, 2013

The Ohio Legacy Trust Act: Protecting Assets From Claims of Creditors

Effective March 27, 2013, Ohio will become one of the most asset protection-friendly states. The Ohio Legacy Trust Act ("Act") permits an individual to create and fund an asset protection trust ("APT") that will protect assets from the claims of creditors. Ohio will join about a dozen other states, including Delaware, Alaska and Nevada, that recognize APTs, known under the Act as Legacy Trusts. Formerly, Ohio did not protect so-called "self-settled" trusts from claims of creditors. Consequently, clients were forced to transfer assets to states with APT legislation or move out of Ohio altogether to protect wealth.

Prior to or contemporaneously with the transfer of assets to a Legacy Trust, the grantor must sign an affidavit stating that

- the assets transferred are not from illegal activity;
- the grantor has the right to transfer the assets;
- the transfer will not render the grantor insolvent;
- the transfer is not intended to defraud creditors;
- there are no pending or threatened court actions against the grantor; and
- the grantor does not contemplate filing for bankruptcy.

The Legacy Trust must be irrevocable, include a spendthrift provision stating that both voluntary and involuntary transfer of the grantor's interest in the trust are prohibited, and have at least one trustee who is an Ohio resident or a corporation that is authorized to serve as a trustee in Ohio. The trustee must maintain custody in Ohio of some or all of the Legacy Trust property, maintain trust records, prepare or arrange for the preparation of tax returns or otherwise materially participate in the administration of the Legacy Trust. The grantor is not a permissible trustee but may be the sole beneficiary of the Legacy Trust or one of several beneficiaries. The grantor may also retain the right to

- withdraw up to 5% of Legacy Trust assets each year in addition to the distributions made in the trustee's discretion;
- provide directions with respect to asset investments;
- remove and replace the trustee;
- live in a residence owned by the Legacy Trust; and
- direct during life or at death that assets be distributed to other than the grantor, the grantor's creditors, the estate of the grantor or creditors of the estate of the grantor.

Creditors at the time a Legacy Trust is created are prohibited from seizing Legacy Trust assets unless they prove that the grantor transferred assets with the specific intent to defraud creditors. Creditors are required to bring an action against the Legacy Trust within a relatively short period after the trust is created. A Legacy Trust will not protect claims relating to child support or spousal support to a former spouse if he or she was married to the grantor prior to the transfer of assets to the Legacy Trust.

The Act includes other key provisions designed to entice investment in Ohio. The homestead exemption from creditors for equity in a primary residence is increased from $20,200 to $125,000. In addition, both 529 education savings plans and inherited IRAs are now specifically protected from the reach of creditors pursuant to the Act.

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