Nevada Asset Protection Trusts

Many wealthy clients who have an estate plan have not adequately protected their assets from the claims of potential creditors. A self-settled spendthrift trust, commonly referred to as a domestic asset protection trust (APT), may be an appropriate creditor protection solution for clients in high-risk professions such as doctors, attorneys, architects, engineers, developers, and other small business owners.

Only a handful of states have enacted laws allowing the creation of APTs, an irrevocable trust in which the grantor is also a permissible beneficiary, a "self-settled" trust. Nevada's absence of exception creditors, no state income tax, and two-year statute of limitations period make it the most desirable state in which to establish an APT.

When an APT is established in Nevada, the assets placed into the trust are protected from all creditor claims after two years. Many other states have legislated certain exceptions to the protection afforded by the trust, for example claims from ex-spouses for alimony, child support, and other specific claims. Nevada has no exception creditors so, after the two-year waiting period for any legal transfer, no future creditor can pierce the trust.

Nevada's law affords an additional layer of creditor protection when limited liability companies (LLCs) and limited partnerships (LPs) established in Nevada are utilized. The "charging order" is an exclusive remedy for a creditor against a Nevada LLC or LP, including single member entities, meaning a creditor cannot take ownership or control of the entity or its assets.

Nevada has the added benefit of no state fiduciary income taxes on trust income allowing for greater planning flexibility.

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