



Family Legacy Protection Planner

SEVEN TRUST-BASED ASSET PROTECTION STRATEGIES FOR YOU AND YOUR FAMILY

You don't have to make your family's assets easy for creditors to reach. Protecting your hard-earned assets for the benefit of yourself and your family can be accomplished through careful planning. These seven trust-based asset protection strategies can put significant (and often insurmountable) obstacles in the way of a creditor.

In this newsletter you will learn about seven trust-based asset protection strategies and how they can:

- Protect your assets from creditors, predators, and lawsuits.
- Protect assets gifted to, or inherited by, your spouse, children, or other beneficiaries.

If you have questions or would like to discuss your options for trust-based asset protection, please call our office now.

Four Types of Lifetime Asset Protection Trusts – Having Your Cake and Eating it Too

A Lifetime Asset Protection Trust is an irrevocable trust created during your lifetime that can be used to accomplish several goals.

1. A *Medicaid Planning Trust* may qualify you or your spouse for Medicaid while preserving an income stream for the well spouse and protecting the trust assets from estate recovery after death.
2. A *Lifetime QTIP Trust* is a lifetime trust for your spouse's benefit using the gift tax marital deduction. This can provide asset protection plus a reduction in overall estate taxes.
3. A *Family Bank Trust*, also known as *Spousal Lifetime Access Trust* ("SLAT") is a lifetime trust for your spouse's benefit using annual exclusion gifts and the lifetime gift tax exemption. Again, these trusts can provide asset protection plus a reduction in overall estate taxes.

4. A *Domestic Asset Protection Trust* (“DAPT”) is a lifetime trust for your benefit, primarily providing asset protection.

1. Medicaid Planning Trusts

Medicaid Planning Trusts may help you and your spouse (if you’re married):

- Qualify for Medicaid while protecting an income stream for the benefit of the well spouse.
- Avoid estate recovery. Assets held in this trust will pass to your heirs protected from the government’s estate recovery, which would otherwise require paying back Medicaid benefits that were received during your lifetime.

Planning Tip: Medicaid is jointly funded by the federal and state governments, so each state sets its own rules and guidelines for Medicaid eligibility and estate recovery. Therefore, a Medicaid Planning Trust must be tailored to the laws of your state of residence. Trusts may also be subject to a look-back period (NOT “disqualification period”) of three or five years. Medicaid Planning usually works best if done as early as possible, so please call our office now if you have Medicaid planning questions.

2. Lifetime QTIP Trusts

When one spouse is significantly wealthier than the other spouse, a Lifetime QTIP Trust offers the following benefits:

- Makes use of the less wealthy spouse’s federal estate tax exemption.
- Provides a lifetime, asset-protected trust for the benefit of the wealthier spouse if the less wealthy spouse dies first. (Subject to state law.)
- Insures that assets left in the trust (after both spouses die) get distributed according to the wealthier spouse’s wishes.

Planning Tip: Lifetime QTIP Trusts offer a great deal of flexibility when spouses have lopsided estates. During the less wealthy spouse’s lifetime, that spouse will receive all of the trust income and may be entitled to receive principal. If the less wealthy spouse dies first, then the assets remaining in the trust will be included in his or her estate, thereby making use of the less wealthy spouse’s estate tax exemption. Although some of the estate tax savings might be obtainable with “portability,” the asset protection aspects are only available with a Lifetime QTIP.

Depending on applicable state law, the remaining trust funds may continue in an asset-protected, lifetime trust for the surviving spouse’s benefit. These trust funds will be excluded from the surviving spouse’s estate when he or she later dies and will ultimately be distributed according to the wealthier spouse’s wishes.

3. Spousal Lifetime Access Trusts

SLATs or “Family Bank Trusts” became popular for married couples in 2012 when it was anticipated that we would go over the proverbial “fiscal cliff.” They still remain popular today as an estate tax reduction and asset protection strategy.

This trust is sometimes also referred to as a “Lifetime Bypass Trust” since it is funded with lifetime gifts that are held for the benefit of you or your spouse. As with a Bypass Trust created after the first spouse’s death, distributions from a SLAT can be as broad or as limited as you choose.

Planning Tip: SLATs are useful if you live in a state that does not collect a state gift tax but collects a state estate tax and the state exemption is expected to remain significantly lower than the federal exemption (e.g., Maine, Massachusetts, Minnesota, New Jersey, Oregon, Vermont and Washington).

4. Domestic Asset Protection Trusts

The goals of a DAPT are to allow you to fund the trust with your own property, maintain some

degree of interest in the trust as a beneficiary, and protect the trust's assets from your creditors. Currently 16 U.S. states permit creation of DAPTs and the number will likely continue to grow, although laws vary widely from state to state.

Planning Tip: The laws governing DAPTs are relatively new and still evolving. In addition, U.S. courts have been limited in interpreting them. Aside from this, bankruptcy laws allow trust assets to remain exposed to the claims of your creditors for ten years. Nonetheless, a DAPT can be a powerful asset protection strategy for the right person.

Three Types of Testamentary Asset Protection Trusts – Ruling from the Grave

A Testamentary Asset Protection Trust is an irrevocable trust created after your death and used for a variety of reasons.

1. *Irrevocable Life Insurance Trusts ("ILITs")* protect life insurance proceeds for the benefit of your heirs.
2. *Standalone Retirement Trusts* protect retirement accounts for the benefit of your heirs.
3. *Discretionary Trusts* protect other assets for the benefit of your heirs.

1. Irrevocable Life Insurance Trusts

An ILIT is a powerful tool for leveraging generation-skipping planning and protecting insurance proceeds for the benefit of your intended beneficiaries. In addition to asset protection, an ILIT can remove life insurance proceeds from your estate for estate tax purposes and, with proper planning, provide much-needed liquidity for owners of illiquid assets, like farms, closely held businesses, or real estate.

2. Standalone Retirement Trusts

Because of the recent U.S. Supreme Court decision in *Clark v. Rameker* (which held that an IRA inherited by a non-spouse beneficiary is not protected from the beneficiary's bankruptcy creditors), the Standalone Retirement Trust has become an important vehicle for protecting retirement accounts from the creditors of your beneficiaries.

Planning Tip: If you have more than \$200,000 in a retirement account and you have named your children as primary beneficiaries of the account, then please call our office now to discuss how a Standalone Retirement Trust can be used to protect the account from your children's creditors after death.

3. Discretionary Trusts

A Discretionary Trust is an Irrevocable Trust that can be built into an ILIT and is an integral part of a Standalone Retirement Trust. You can also include a Discretionary Trust for each of your beneficiaries in your Revocable Living Trust to protect other assets.

Planning Tip: If you are concerned about an heir who is (or may become) a spendthrift, married to an overreaching spouse, bad at managing money, in a high-risk profession, or worried about being sued, we can help you incorporate Discretionary Trusts into all of the testamentary trusts created in your estate plan.

Trust-Based Asset Protection Planning - The Bottom Line

Although asset protection trusts must be irrevocable to safeguard the trust property, they still offer a great deal of flexibility and protection for your own property as well as property gifted to, or inherited by, your loved ones.

This type of planning can become complicated and should not be attempted without the assistance and counseling of an experienced attorney. We are here to answer your questions

about trust-based asset protection strategies and advise you on planning options. Please feel free to call our office now.

ENSURE YOUR FAMILY IS PROTECTED

If you want to ensure that your family is protected, please schedule your complimentary Estate Planning Strategy Call with San Francisco's premier estate planning attorney, Matthew J. Tuller.

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With an emphasis on developing and maintaining relationships with our clients and allied professionals, our firm collaboratively provides comprehensive estate planning and administration solutions to every client. Our firm provides the full spectrum of estate planning solutions. This includes creating and implementing a comprehensive estate plan, maintaining that plan through life, and administering the plan in the most effective and efficient manner.



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