

PROTECTING YOUR ASSETS FROM YOUR CHILDREN'S CREDITORS AFTER YOU DIE

This is a topic we have discussed far more frequently with you in the past 10 years, but it has been many years since we have written about it in this newsletter, and it deserves to be revived. While discussing the minimization of federal and state estate taxes is still a significant part of our meetings since there have been a number of changes recently, the bulk of the discussion now tends to revolve around how the children will inherit from you. There are generally three options. First, leave everything outright to the children, which rarely occurs if the assets are substantial. Second, if you have minor children, we typically recommend creating trusts for the children which terminate at ages such as 30 and 35, when they are older, more mature and can handle the inheritance. The third option has become most commonly (and almost universally) used by our clients with adult children and grandchildren, which is to hold the inheritance in a lifetime trust for the children, also known as a "generation-skipping trust". The primary reason is for creditor protection for the children. Creditors can arise as the result of an act of a failing business with a bank as a creditor, malpractice, if your child is a professional, or the divorce of your child.

The "generation-skipping trust" provides income to the children and distribution of principal with the consent of the trustee. When the child dies, the trust will be distributed to the grandchildren. The advantage of the trust is that since the child does not have control of the assets (the trustee has the control), creditors cannot attach the trust principal. As a side benefit, this technique enables you to "dictate from the grave" that your estate will eventually pass to your grandchildren when your child dies and will not pass to your son-in-law or daughter-in-law upon your child's death.

Please contact us if you would like to discuss this topic further.

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