

What You Need to Know and Frequently Asked Questions

DOMESTIC ASSET PROTECTION TRUST

SETUP

A trust is a private contractual agreement between the person setting up the trust (settlor) and the trustee of the trust. The trust must designate beneficiaries and a protector. At the start of the process we will email you the information we will need to draft the trust. Once we receive the information from you, it will take us approximately one week to draft the trust and email to you for execution. You will need to sign the trust and have your signature notarized (either at the time of execution or later). The trust is not publicly registered or recorded.

The trust will be irrevocable by you and you will not have the power to make changes to the trust. Such powers will be bestowed on the trust protector. Usually, the trust protector will have the power to terminate the trust, revoke the trust, change the trustee, change the beneficiaries and amend the trust. You will have the power to replace the protector.

We will prepare a grant deed to transfer the ownership of your real estate (if any) to the trust and record with the appropriate county recorder. For other assets we can prepare an assignment agreement, but we will not be able to set up bank or investment accounts for the trust. Only the trustee of the trust can do so. We will obtain a tax identification number for the trust to facilitate taxation.

We usually structure our domestic asset protection trusts to be fully ignored for all tax purposes. This means that the trust will be ignored for income tax purposes and for gift tax purposes. The trust should also not result in property tax reassessment on California real property transferred to the trust. For all tax purposes, the domestic asset protection trust should work identically to a living trust.

Does an irrevocable trust avoid probate? Yes. Assets transferred to any type of trust will avoid probate.

What is the difference between revocable and irrevocable trusts? If the person transferring assets to the trust retains the power to transfer the assets back to his name, the trust is deemed revocable. If there is no such power, the trust is irrevocable. All asset protection trusts must be irrevocable. Having a trust protector with the power to revoke the trust and return the assets to you will not cause the trust to be deemed revocable.

Who may be the beneficiary of the trust? Anyone other than you or your spouse (with some rare exceptions). Children or other family members are the most common choices. Just because someone

is named as a beneficiary does not mean that they will receive any distributions from the trust. Distributions are ultimately within your control, through the trustee and the protector.

Who may be the trustee? You can appoint anyone, including yourself, as the trustee of the trust. However, because the trustee's name will appear on the title of the assets transferred to the trust, we recommend you pick someone with a different last name.

Who may be the trust protector? You can appoint anyone other than yourself or your spouse as the trust protector. The trust protector is the most important appointment and it should be the person you trust the most.

What if I have trouble finding a trust protector? Our law firm can appoint a corporate trust protector. They charge an annual fee of \$490 for up to 2 trusts and \$790 for 3 or more trusts.

MAINTENANCE

There are no annual tax filing or other reporting requirements for the trust. We do recommend that you maintain books and records for the trust and establish a bank account for the trust. If the trust will own your residence, then the rent payments should be deposited to the trust's account and property expenses should be paid from that account.

What are the Trustee's responsibilities? A Trustee's name will appear on title to real property owned by the trust. The Trustee will also be the one who will physically go to the bank and open an account in the name of the Trust. The Trustee will be the sole signatory on that bank account. In the event of either refinancing, selling or if you would need to transfer the real property back to your name, the Trustee will need to sign the necessary Grant Deed.

How do I replace the Trustee? The Trust Protector can remove or replace the trustee. The specific terms of your Trust will dictate how to remove the Trustee. If the trust owns real property, an Affidavit Substitution of Trustee may need to be recorded.

How do I make changes to the beneficiaries? This is dictated by the terms of the trust. The power to change beneficiaries may be granted to the trust protector.

What type of personal or real property can be held in my trust? The trust can hold any type of property. If you transfer your residence to the trust, you should pay rent to the trust to live in the residence, and the trust can then use that money to make mortgage payments and pay property taxes. If you have transferred income producing property into the trust (real or personal), then keep in mind that the trust can only distribute money to the named beneficiaries. For this reason, we rarely use irrevocable trusts for income producing assets.

How do I add real properties to my trust? Any real property is added or removed from a trust by a Grant Deed (Warranty Deed outside of California).

How often should I have my trust reviewed? Because of the periodic changes in the law and changes your life, the trust should be reviewed every 4-5 years. Watch out for the following events: sale of a property in the trust; purchase of a property; refinancing of a property; birth of a child; death of one of the settlors; beneficiaries, trustee or protector.

Does my trust need its own tax identification number? Your trust, if a grantor trust, will use your social security number and report your income from the trust on your 1040. If your trust will open a bank account, it should have an Employer Tax Identification Number (EIN). We would obtain it for you, if needed.

Should I inform the mortgage company of the transfer of title? No, there is no obligation to do so, and if properly structured the mortgage lender will not be able to exercise the due on sale clause in the mortgage.

What about property insurance? If you have an existing homeowners or other property and casualty insurance policy, then you should notify your insurance agent of the transfer to the trust so that the trustee can be added as an additional insured to the policy.

TAXATION

Do I or the Trustee file taxes differently regarding the assets in this Trust? No, all income related to trust assets will continue to be reported on your personal income tax return.

Will the Trust be required to file a tax return at any time? Most trusts we draft are structured as grantor trusts for income tax purposes. This means that the trust is ignored for all income tax purposes and no returns are required. It further means that you still get the benefit of the mortgage interest deduction, the \$250,000/500,000 gain exclusion on sale and the property tax deduction.

Are there gift taxes? We draft most trusts to avoid the application of the gift tax. This also means that the assets transferred to the trust remain in your estate for estate tax purposes.

ALTERNATIVELY: There is no downside to filing separate tax returns for the trust. It may help in litigation to establish the separate nature of the trust. Please confirm with your CPA what tax filing requirements may apply.

UNWIND

Would I be able to take assets out of the trust? Your protector will have the power to return the trust assets to you, or to distribute the assets to the trust's beneficiaries and then terminate the trust.

If you have further questions, we are always happy to answer them.

Schedule Your Free Consultation

Phone: 1-818-933-3838 | Email: info@aliantlaw.com

CREATIVE AND AGGRESSIVE ASSET PROTECTION PLANNING