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HELLMUTH & JOHNSON, PLLC

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Another State Sees the Value in Allowing Asset Protection Trusts

Hawaii recently embraced Asset Protection Trusts, which can help professionals in high-risk jobs protect assets from lawsuits and predatory creditors.

Asset Protection Trusts can also be used to help elderly clients qualify for Medicaid to cover the enormous costs of long-term care.

Hawaiian lawmakers introduced this Trust last year. Initially, the cost of designing such a Trust discouraged many potential clients. But after going back to the drawing board, a revised (and far less expensive) version of the Trust debuted after the legislature heard complaints by estate advisers.

Can My Client Afford This?

Probably. This less expensive version of the Trust is both a Dynasty Trust that lets someone preserve assets over decades and beyond, and an Asset Protection Trust. It is very flexible, so we can really do a lot with it.

Hawaiian lawmakers lifted a 1 percent tax on the amount of money used to create the Trust, and on any additional funds that went into it. They lifted a rule that said only 25 percent of one's net worth could go into it. And, they did away with a restriction that said a Trust could only hold cash or marketable securities.

Many states allow Dynasty Trusts, but the same can't be said of Asset Protection Trusts. Only about a dozen other states already allow Asset Protection Trusts, which have attracted a lot of interest since Alaska enacted the first asset protection law in 1997.

What Can Go in This Trust?

Liquid assets work best, but other kinds can go in, too. For example, closely held business interests, private equity and even real estate can work.

These Trusts have been criticized in the past as a way to let wealthy people shield themselves unfairly. But there is a trend to accepting the trusts now. That will only speed up if a few big states come on board in the

next few years.

Use an Experienced Asset Protection Attorney

Despite the growth, an element of uncertainty remains around these Trusts. State laws haven't been tested through court challenges. So, someone who assumes that a Trust will be ironclad may discover, when laws evolve through litigation, that creditors who have gotten judgments in other states are able to reach the assets after all.

Your clients should talk to an experienced estate planning attorney who fully understands how to draft such a complex Trust and has experience doing so.

As always, I hope this article has helped you and your clients. If you have a specific case or concern you'd like to discuss, please call our office.

This publication provided by:

TIMOTHY O. DAVIS

Phone: 952-746-2104

Email: tdavis@hjlawfirm.com

SUSAN L. ANDERSON

Phone: 952-746-2123

E-mail: sanderson@hjlawfirm.com

Tim is a partner in the firm with 30 years of experience.

Susan brings over 17 years experience. Both Tim and Susan specialize in Estate and Business Planning, Probate and Trust Law, and related Tax matters. They assist clients in creating estate plans that provide for the control, maintenance, and disposition of their assets in a manner consistent with their objectives.

Hellmuth & Johnson, PLLC has 36 attorneys and is a full service firm offering legal services to individuals and businesses, with a heavy concentration in real estate, real estate construction and litigation matters.



HELLMUTH & JOHNSON PLLC

ATTORNEYS AT LAW

8050 West 78th Street

Edina, MN 55439

Phone: (952) 941-4005

Fax: (952) 941-2337

Web: <http://www.hjlawfirm.com>