BOLHOUSE, BAAR & HOFSTEE, P.C.

ATTORNEYS AT LAW

Using the New “DAPT” to Protect your Assets

Michael G. Lichterman

April 2017

Asset protection is a topic that I am quite often asked about. In late 2016, Michigan enacted the Qualified Dispositions in Trust Act (2016 PA 330). To understand why this is such a big deal, you should first understand how trusts and asset protection worked in Michigan up to this point.

Previously you could not create a Michigan trust, put assets into it, retain some control over the assets, and remain a beneficiary of the trust while at the same time keeping it out of the reach of creditors. You could create a trust in which you gave up all control over the assets you put into it, but additionally could not have them distributed back to you under any circumstance. Or, you could create a trust in another state or outside the US. But who wants to do that?!

With this new law, it is now possible for you to create a trust, retain a beneficiary interest in it, retain a level of control over the assets in it, AND keep your creditors from getting to the assets in the trust. In short, it is a 180° turn from prior law. This type of trust is regularly referred to as a Domestic Asset Protection Trust (DAPT). The concept is straight-forward, yet there are plenty of hoops to jump through to make sure the trust has the full protection.

Depending on the specific circumstances, the DAPT may not protect the assets from all creditors. One of the main requirements is a two-year delay period: the protection is not gained until two years after the assets are put into the trust. You must also watch out for "fraudulent conveyance" laws - laws that make the assets in the trust still accessible to creditors if the transfer to the DAPT is fraudulent (e.g., with intent to hinder, delay, or defraud any creditor). For that reason, timing is very important with a DAPT. It is not something you wait to set up until you find out you are being sued, behind on payments, or otherwise know that there is or will be a legal claim against you. You must act early.

This kind of trust is not for everyone, yet it is a huge benefit for some. Who does this help? Anyone who has a greater than average risk of a lawsuit: physicians, lawyers, business owners, etc. This type of trust is NOT something that you would put everything into and then thumb your nose at creditors. There is a very good chance that would be considered a fraudulent transfer and a court would haul those assets back in to the proceeding. But it does allow for "setting aside" some assets to protect them from creditors. Think of it as not just having a "rainy day fund", but having that rainy day fund fully protected.