PROTECTING ASSETS

Using a Domestic Asset Protection Trust

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As uncomfortable as it may be to think about, asset protection planning for divorce is an important consideration for many individuals who bring significant assets into a marriage.

A common asset protection strategy is a prenuptial agreement; however, negotiating a prenuptial agreement can be a stressful event for spouses-to-be and can lead to conflicts between the two families. In addition, because state laws and various judges' opinions can vary widely, a prenuptial agreement is not always effective in protecting assets in case of a divorce.

Domestic Asset Protection Trust

Instead of a prenuptial agreement, clients may want to consider a Domestic Asset Protection Trust or DAPT. A DAPT is an asset protection vehicle that can be used to shield assets from creditors. When established in a jurisdiction that permits this type of protection, a DAPT can also be effective in shielding assets in the case of divorce.

Unlike a traditional revocable living trust, a DAPT is an irrevocable trust that allows the trust creator to be a discretionary beneficiary, while the trust's assets remain protected from creditors. Here's how a DAPT works:

1. **Protection –** A Domestic Asset Protection Trust is an irrevocable trust established and funded by the grantor (self-settled) to protect assets from potential creditors.
2. **Distributions –** The trustee has sole discretion to make distributions of principal and income to the grantor and/or any other named beneficiaries.
3. **Transfer –** Assets transferred to the trust, and any appreciation on those assets, are removed from the grantor's estate. Initial funding may be a completed gift using a portion of the grantor's unified credit.
4. **Prohibited –** Transfers in fraud of creditors are prohibited.

Considerations

There are some important considerations to keep in mind when determining whether a Domestic Asset Protection Trusts may be right for you:

- In addition to protecting assets from divorce, DAPTs are effective in protecting individuals with increased risk exposure, such as physicians, lawyers, accountants, business owners, investment advisors, professional athletes, real estate owners, and anyone else with accumulated wealth.
- It is important to select a DAPT with proper jurisdiction. The DAPT should be established and administered according to the laws of states that have adopted self-settled asset protection statutes.
- Be cautious when transferring real estate assets to a DAPT. If the real estate is located in a state that is not DAPT friendly, a creditor may establish jurisdiction over the real estate and gain access to the DAPT assets.

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- DAPTs will not offer protection if fraudulent transfers are involved, including any transfer of property to the DAPT that is made with the intent to hinder, delay or defraud creditors.
- A DAPT will not protect against existing or foreseeable liabilities or against child support claims.
- DAPTs are irrevocable.
- The DAPT trustee should be independent of the grantor and have absolute discretion over any distributions.
- There are costs associated with the creation and ongoing administration of the DAPT.
- DAPTs can be used as a strategy to reduce potential estate tax liability and/or provide planning for multi-generational heirs.

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Mariner Trust Company can administer DAPTs on behalf of Mariner's clients. These DAPTs are administered according to South Dakota statute. Some advantages of DAPTs administered in South Dakota include:

- Allows the transfer of marital property to DAPT
- Includes a two-year look-back period
- No state income tax
- Single order charging remedy
- Affidavit not required for ongoing contributions

For additional information about whether a DAPT may be right for your specific situation, please contact your wealth advisor.

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