



MULDER LAW GROUP, P.C.

BENEFITS OF SPENDTHRIFT TRUSTS

What is a Spendthrift Trust?

There is a doctrine termed “spendthrift” used in the administration of a trust. If someone other than the beneficiary transfers property to a properly designed trust for the benefit of that beneficiary, creditors and the spouse of the beneficiary are not able to reach the assets of the trust for any reason. Years ago, this was a frequently used technique for leaving property to children who lack the financial ability to manage money. Now, in this litigious society, it is the only way to leave property to your children or other loved ones, no matter how qualified they are to manage their finances.

Why are estate planners and their clients increasingly using Spendthrift Trusts?

It is easier to explain why, if we first understand that there are essentially two methods to leave property to the typical beneficiary, excluding those that are irresponsible, etc., they are:

- ◆ Outright to the beneficiary
- ◆ In a trust for the beneficiary where the beneficiary is the trustee

As we are assuming that there are only two methods to leave the property, we need to compare them with one another.

What can an owner of property do with the property?

There are actually a fairly limited number of things, they can do, and they are:

- ◆ Give the property away
- ◆ Leave the property to anyone they want after death
- ◆ Use the property without paying for the use
- ◆ Sell the property
- ◆ Lose the property to a creditor
- ◆ Lose the property to a divorcing spouse

Let's compare that to putting the property in a Spendthrift Trust -

Let's see what the comparison shows:

- ◆ **Give the property away:** The Beneficiary of a Spendthrift Trust may be given the power to transfer the property in the trust to anyone during their lifetime. In essence, the Spendthrift Trust is identical to the outright bequest free of trust. We'll give this an Equal Power rating.
- ◆ **Leave the Property to anyone they want after death:** The beneficiary may be given the power to leave the property to anyone at death. In essence, the Spendthrift Trust is identical to the outright bequest free of trust. We'll give this an Equal Power rating.
- ◆ **Use the property without paying for the use:** The beneficiary-trustee of the Spendthrift Trust may be authorized to use the property of the trust without paying for the use. This would include the use of a home, personal property or any other asset. In essence, the Spendthrift Trust is identical to the outright bequest free of trust. We'll give this an Equal Power rating.
- ◆ **Sell the property:** The beneficiary-trustee may be given the power to sell the property and reinvest the proceeds. In essence, the Spendthrift Trust is identical to the outright bequest free of trust. We'll give this an Equal Power rating.
- ◆ **Lose the property to a creditor:** The Spendthrift Trust may be prepared in such a manner that creditors of the beneficiary-trustee may not attach assets held in the Spendthrift Trust. The Spendthrift Trust provides better creditor protection. We'll give this a Superior Protection rating.
- ◆ **Lose the property to a divorcing spouse:** The Spendthrift Trust can be prepared such that a divorcing spouse has little or no rights to the Spendthrift Trust's property. The Spendthrift Trust provides better asset protection. We'll give this a Superior Protection rating.

Now, let's see how the Spendthrift Trust did in the item by item comparison:

- ◆ **Give the property away: EQUAL RATING**
- ◆ **Leave the property to anyone they want: EQUAL RATING**
- ◆ **Use the property without paying for the use: EQUAL RATING**
- ◆ **Sell the property: EQUAL RATING**
- ◆ **Lose the property to a creditor: SUPERIOR PROTECTION**
- ◆ **Lose the property to a divorcing spouse: SUPERIOR PROTECTION**

Since the Spendthrift Trust is so far superior to outright bequests, why don't all clients use them?

The primary reason is many estate-planning practitioners are simply not familiar with the technique. In addition, some clients simply do not want what they perceive to be, "complicated estate plans."

Are Spendthrift Trusts complicated?

No, they are not. An easy comparison is the Family or Credit Shelter Trust that holds the estate tax free amount for the first spouse to die. An annual tax return is due and accounting and monitoring must be done. However, it seems to us that the benefits provided by the Spendthrift Trust far outweigh the additional costs after the surviving spouse has died.