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# Protecting Assets With An Alaska Trust

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You've worked hard to amass your families wealth. So it's unfortunate when the family fortune is exposed to creditors or litigious individuals. Fortunately, there's an innovative technique for safeguarding your assets.

**Strategy:** Establish an "Alaska trust" that meets certain requirements (*see box*). This is a self-settled trust where the grantor and the beneficiary are the same person. Yet the trust receives the same protection normally afforded to other types of trusts.

In other words, the trust provides ironclad protection from creditors while allowing you to continue to maintain access to and control over the trust assets. Usually, you can have only one or the other.

The trustee must be a "qualified person" under Alaska law such as a bank or professional located in Alaska. This financial planning concept is based on a number of favorable provisions under Alaska state law.

**Background information:** In the usual arrangement, a grantor funds a trust with cash and/or property. Funds are then distributed over time or when a specified event occurs to the beneficiary (or beneficiaries) designated in the trust document. An independent third party is named as the trustee and is responsible for carrying out the trust terms.

Affluent individuals often create "spendthrift trusts" providing access to the trust funds only to the designated beneficiary. This protects the assets if the grantor is concerned that the

beneficiary might mishandle the money or that creditors could invade the trust corpus. Generally, this advantage for spendthrift trusts is not available for self-settled trusts.

**Key exceptions:** The law in eight states—Alaska, Delaware, Missouri, Nevada, Oklahoma, Rhode Island, South Dakota, Utah—allow asset protection for self-settled trusts. In particular, the legislators in Alaska and Delaware have created friendly environment. Generally, an Alaska trust is preferable to a Delaware trust because of a few technical differences. Delaware has created a class of "preferred creditors" who may be able to invade the trust to satisfy certain claims. Alaska has no such provision. Also, Alaska recently amended its laws to protect assets from a divorced spouse (*see box*).

Generally, creditors in other jurisdictions can reach trust assets if the grantor can receive trust distributions. Under Alaska law, trust assets are not subject to creditor claims unless the intention of the original transfer was to defraud known creditors or cause the grantor to become bankrupt. Furthermore, an Alaska trust can continue for several generations, thereby reducing estate taxes.

**Tax bonus:** Alaska does not impose any state income tax, so tax is avoided on income retained by the trust.

However, income earned by an Alaska trust is subject to state income tax in the state where the grantor resides.

## 4 Conditions for Alaska Trusts

A grantor must meet the following four conditions under Alaska law to receive asset protection for a self-settled trust:

1. The transfer to the trust was not intended to hinder, delay, or defraud creditors
2. The grantor cannot revoke or terminate the trust without the consent of another beneficiary with a substantial interest in the trust.
3. The trust does not require any trust income or principal to be distributed to the grantor.
4. The grantor, at the time of the trust transfer, was not in default by 30 days or more in making child support payments under a court judgment or order.

## Know the extent of the powers

Normally, you might be reluctant to give up control over assets through a trust. But asset protection under Alaska law is available even if you may choose to reserve the right to direct trust asset distribution upon death through a testamentary special power of appointment. Similarly, if multiple beneficiaries are named, you might retain the right to veto distributions to other beneficiaries.

In either event, there's no gift tax due on transfers to the trust, but the assets are included in your taxable estate. If the trustee must distribute assets to the grantor, asset protection isn't available.

On the other hand, if you don't retain either the testamentary distribution or the veto powers, the transfer is treated as a completed gift. Thus, you could receive benefits from assets that have been removed from the taxable estate.

**Advisory:** There are several legal requirements for Alaska trusts. For instance, trust assets in Alaska must be administered by a "qualified person" under Alaska law (i.e., a trustee). The trustee's responsibilities should include record maintenance and tax return preparation.

## Why Alaska trusts have an edge

Several key provisions in Alaska state law adopted in 1998 encourage the use of self-settled trusts:

- It is possible to change the situs (i.e., legal location) of an existing trust to Alaska. Protection from creditors is extended to some trust's assets must be deposited in Alaska; the trust named at least one Alaska trustee; and the trust is registered in Alaska.
- If a situation exists whereby a transfer to a trust defrauds creditors, only the portion that is necessary to satisfy creditors will be set aside.
- Non-Alaskans may serve as co-trustees and are not considered to be doing business in Alaska.
- Under an elective community property statute, married Alaska citizens can re-characterize some or all of their assets as community property. The statute also allows married non-Alaskan residents to treat the asset as community property under Alaska law. This is achieved with an Alaska Community Property Trust, which uses an Alaska trustee.