ASSET PROTECTION

Las Vegas Asset Protection Attorneys

Designing the right Wills and trusts is only one part of your overall plan for the future. You also want to engage in asset protection planning in order to protect the assets you have and maximize the ultimate transfer of wealth to your beneficiaries. At JEFFREY BURR, we will help you create an asset protection plan, which is integrated with your current estate plan.

Do you want to insulate yourself from a frivolous lawsuit? If so, you want to come up with a comprehensive asset protection plan. As one of only a handful of states that has adopted the domestic asset protection trust, Nevada provides many options for asset protection that are not available in other states. Also known as a self-settled spendthrift trust, this estate planning tool allows you to create a trust that makes it difficult for a creditor to access those assets. If you are interested in asset protection, you want to make sure you explore all your options and come up with a plan that is right for you and your family. Consider our lawyers at JEFFREY BURR as your Las Vegas asset protection team, to help you come up with an asset protection plan as part of our integrated estate planning process. If you want to protect your savings from creditor attack and other lawsuits, we will help you explore the following options and more:

- Domestic Asset Protection Trust
- Offshore Trusts
- Splitting Assets
- Gifts
- Homestead and Other Statutory Exemptions
- Third Party Spend Thrift Trusts

FREQUENTLY ASKED QUESTIONS ABOUT ASSET PROTECTION

Who should consider asset protection? When should I be concerned about asset protection?

A vital component of the estate planning involves preserving and protecting one's wealth which, for most people, has likely required the better part of a lifetime to accumulate. Today, asset protection strategies are being implemented with greater frequency to stem the swelling tide of damaging lawsuits and creditors' claims.

Some such asset protection strategies include revocable trusts, irrevocable trusts, gifts, homestead exemptions, family limited partnerships, limited liability companies, offshore trusts, and Nevada On-Shore Trusts.

Independent contractors, business owners, and providers of professional services such as doctors, dentists, lawyers, accountants, engineers, architects, and insurance brokers, who are exposed to certain risks and liabilities in the business world, should consider implementing an asset protection strategy. Also, anyone who is concerned about losing hard-earned assets due to accidents and misfortune should consider an asset protection trust.

What kinds of assets can be protected?

Certain assets are exempt from creditor attachment in Nevada by statute, including:

- -Household goods up to $12,000
- -One vehicle up to a $15,000 value

- -75% of disposable earnings during a week or 50 times the current minimum wage, whichever is greater
- -All money, benefits or privileges from life insurance
- -Up to $500,000 held in certain exempt retirement accounts, employee pension plans or qualified plans

The above is not an exhaustive list, and may not be exempt under Federal law. For a more complete list please see Nevada Revised Statute 21.090.

In addition to the assets listed above that are exempt from creditor attachment by statute, you may take steps to protect any other asset through the use of asset protection vehicles such as limited liability companies and Nevada On-Shore Trusts. To utilize such vehicles, assets must be transferred from your individual name to the company or trust. For real property, a deed must be executed, for stocks, bonds or other accounts, title must be changed using various forms (usually provided by the financial institution which holds the accounts), and items of personal property can be transferred via assignment. Once assets are transferred into the name of the protected entity, and other requirements are met (such as the two year waiting period for a NOST), the assets will be protected from most creditors.

Where can I get asset protection?

Asset protection can take many different forms. Some forms include irrevocable trusts, gifts, homestead exemptions, family limited partnerships, limited liability companies, offshore trusts, and Nevada On Shore Trusts.

To discuss which asset protection strategy best fits your overall estate planning objectives and unique situation, call the attorneys at JEFFREY BURR, LTD. today.

What is the difference between Onshore and Offshore asset protection trusts?

Because of the jurisdictional advantage of having a trust located in a far away and debtor friendly place like the Cook Islands, Nellis or Panama, the Off Shore Asset Protection Trust is the ultimate asset protection weapon.

The trust is established under the laws of a carefully selected foreign country where it is difficult to enforce a judgment rendered by a US court in favor of a creditor. With increases in frivolous lawsuits and large damage awards being handed down by US courts at an ever-increasing rate, many people feel that it is necessary to protect their assets through the use of an offshore trust.

The grantor can maintain the use and enjoyment of trust assets, but must have at least one trustee located in the foreign jurisdiction.

Does a revocable trust provide creditor protection for me? What protection does a revocable trust provide?

Contrary to the belief of many, a revocable trust (i.e., one which gives the grantor/creator the power to revoke, amend or modify the trust at any time) will **not** protect the grantor from his or her creditors; however, it can protect the beneficiaries (other than the grantor) from their creditors if the trust has what is called a “spendthrift” provision. A spendthrift provision prevents a trust beneficiary from transferring, assigning, or selling his or her interest in the principal and/or income of the trust, either voluntarily or involuntarily. To achieve protection for the beneficiaries, the trust must be set up so that the principal and income continue in trust on the death of the grantor, and remain subject to a spendthrift provision. However, the assets will still be liberally available for the benefit of the beneficiaries.

Another method of asset protection for married couples using revocable trusts entails partitioning a couple’s community property into each spouse’s separate property, then creating two separate property trusts, one for the husband and one for the wife. With certain exceptions, any property placed into the trust of one spouse should be protected from the creditors of the other spouse. Separate property trusts may be especially advisable where one of the spouses is exposed to a significantly higher risk of liability than the other spouse, such as a physician or other professional.

How does asset protection work?

How asset protection works depends on the asset protection strategy or vehicle you use:

Limited Liability Company: Creditors can generally attach only the money or property that is distributed to a particular debtor-member of the LLC. The manager of the LLC, or the controlling member or members of the LLC, also has some flexibility in withholding distributions to ensure that a particular debtor-member's creditors do not get the property. Additionally, Nevada is one of only a handful of states that provides by law that the charging order is the exclusive remedy for creditors of LLC members.

Offshore Trusts. When a trust is created under the laws of a debtor friendly jurisdiction like the Cook Islands, creditors find it almost impossible to enforce their US judgment, as the foreign jurisdictions are not bound by US Court Rulings.

Nevada On Shore Trusts. In order to get an asset inside a NOST protected from creditors, generally two years have to elapse from the date the asset is transferred into a NOST. Creditors existing at the time the settlor transfers property into the trust must commence an action within two years after the property transfer or six months after they discover (or should have discovered) the transfer, whichever is later. Those who become creditors after the settlor transfers property into the trust must commence action within two years of the transfer. Thus, anyone who became a creditor at least two years after property is transferred into a NOST would be forever barred from bringing an action to recover such property.

Are any assets automatically protected from creditors?

Under Nevada statute, certain assets are exempt from creditors' claims. The purpose of the statute governing exemptions of certain property from execution is to secure to the debtor the necessary means of gaining a livelihood while doing as little injury as possible to the creditor.

The following are several assets which are exempt from creditor claims:

- - Homestead up to $550,000
- - Family pictures and keepsakes
- - Household goods and furnishings up to $12,000
- - One vehicle worth up to $15,000
- - 75% of disposable earnings during a week or 50 times the current minimum wage, whichever is greater
- - All money, benefits or privileges from life insurance
- - Up to $500,000 held in certain exempt retirement accounts, employee pension plans or qualified plans

The above is not an exhaustive list, and may not be exempt under Federal law. For a more complete list please see Nevada Revised Statute 21.090.

What is a Nevada On-Shore Trust?

The Nevada On-Shore Trust (also called a NOST) is the most recent addition to asset protection. A NOST, also known as a Domestic Asset Protection Trust (DAPT) is an irrevocable trust, which if implemented properly, should shield all of the assets inside the trust from creditor attack. Although this trust is irrevocable, the creator of the trust (or grantor/trustor) typically remains a beneficiary of the trust and can use and enjoy trust property. The grantor may also have the following powers:

- -The grantor may serve as the investment trustee
- -The grantor can change the distribution provisions of the trust at any time
- -Although the grantor cannot serve as distribution trustee, he may have the right to veto any proposed distribution from the trust.

In order to get an asset inside a NOST protected from creditors, generally two years have to elapse from the date the asset is transferred into the NOST. However, after two years any additional assets purchased with the proceeds from the sale of the initial asset are immediately protected.

In the event of a catastrophic event, the liquid assets inside a NOST may be transferred or 're-domiciled' into an offshore trust if necessary to get additional protection.

Under Nevada law, at least one of the trustees of the NOST must be a qualified Nevada trustee (which can be an individual resident, or a bank or trust company with offices in Nevada). Also, the trust must (1) be in writing; (2) be irrevocable; (3) not require that any part of the trust's income or principal be distributed to the settlor; and (4) not be created with the intent to hinder, delay or defraud known creditors of the settlor.

Although a NOST cannot require that a distribution be made to the settlor, a trustee other than the settlor may have the discretion to distribute trust income or principal to the settlor. Thus, as long as the trust meets the general requirements described above, the settlor may still be a primary beneficiary of the trust while the assets he or she transfers into the trust are shielded from his or her future creditors.

As to creditors' claims, Nevada law specifies exactly who can bring an action against property transferred into a NOST. Creditors existing at the time the settlor transfers property into the trust must commence an action within two years after the property transfer or six months after they discover (or reasonably should have discovered) the transfer, whichever is later. Those who become creditors after the settlor transfers property into the trust must commence action within two years of the transfer. Thus, anyone becoming a creditor at least two years after property is transferred into a NOST would be forever barred from bringing an action to recover such property.

The Nevada On-Shore Trust is a new and innovative estate planning and asset protection strategy which provides a way for individuals and families to protect their assets from potential creditors' claims while maintaining a significant measure of control and access to such assets.

At Jeffrey Burr, LTD. we can help you decide whether a Nevada On-Shore Trust is right for you.

Does a Nevada On-Shore Trust work outside of Nevada?

With Nevada being only one of a few states to adopt an asset protection (also known as self-settled spendthrift trust) trust statute, the issue of the trust's enforceability outside of Nevada remains a question. However, Nevada law provides that the enforceability of a self-settled spendthrift trust, whether created in or outside of Nevada, will be respected so long as: (1) all or part of the property transferred into the trust is located in Nevada; (2) the declared domicile of the trust's settlor is in Nevada; (3) all or part of the trust's administration (including the preparation of the income tax returns and maintaining trust records or documents) is performed in Nevada by a qualified Nevada trustee.

Based on these requirements, the safest case would be a spendthrift trust created by a Nevada resident, with all its property located in Nevada, having an acting Nevada trustee. In such a case, creditors would have an extremely difficult time attacking the trust. In addition, Nevada assets transferred into a spendthrift trust containing out of state assets (say, from California or Arizona) should be safe from creditor attack. The most vulnerable assets in a Nevada On-Shore Trust would be those assets located outside of Nevada. However, out of state personal property, such as stocks, bonds, limited liability company (LLC) interests and cash equivalents, can easily be moved to Nevada so as to be protected from future creditors' claims.

How much asset protection does an LLC provide?

In recent years, the limited liability company ("LLC") has gained prominence as an effective tool for protecting assets from creditors' claims.

An LLC combines the limited liability characteristics of a corporation with the tax benefits and flexibility of a partnership. Like the partnership, creditors can generally attach only the money or property that is distributed to a particular debtor-member of an LLC. Furthermore, the manager of the LLC, or the controlling member or members, has some flexibility in withholding distributions to ensure that a particular debtor-member's creditors do not get to the property.

Additionally, Nevada is one of only a handful of states that provides by law that the charging order is the exclusive remedy for creditors of LLC members. For example, an LLC need not fear the prospect of an outside creditor taking control of business assets in an effort to collect on a member's outside liabilities, as the charging order remedy prevents this from happening. Outside creditors may only reach LLC distributions to the actual debtor-member, if and when such distributions are made. Thus, such creditors are forced into a difficult negotiating position when attempting to satisfy a judgment with LLC assets while LLC owners are granted an extra degree of protection and leverage in reaching a favorable settlement.