

Protect Assets from Bankruptcy with Protective Trusts

October 2009



A protective trust can be set up to ensure a beneficiary is provided for even when they may be financially irresponsible, unfortunate or subject to bankruptcy or divorce proceedings.

A protective trust can be used to ensure that a beneficiary obtains benefits from an asset but without the risk that it may be sold by a profligate beneficiary who may attempt to use trust assets or fritter them away so that nothing would remain for future generations of the family. Also, protective trusts can be used to provide for individuals who may be in an unstable marriage or other relationship, suffer from disability, require special care or for some other reason are incapable of managing their own finances and affairs.

A protective trust can be drafted in such a way as to give a beneficiary an interest in possession in the trust fund until a certain circumstance occurs such as the beneficiary being made bankrupt, undergoing a divorce or attempting to sell the trust assets occurs. On the occurrence of any of these events the trust deed may specify that the trust will automatically become a discretionary trust and the effect of this change will be that the beneficiary has only the right to be considered by the trustees for distribution of any income or benefits from the trust fund.

It may be advantageous to set up protective trusts if the person who is to benefit is in a risky financial situation. Protective Trusts can safeguard assets in the event of bankruptcy proceedings being taken. In the current economic climate where many individuals are struggling with debt and the prospect of bankruptcy appears to threaten a greater proportion of society protective trusts may be a very useful vehicle to protect inherited wealth in particular. Now may be an appropriate time to consider creating a protective trust.

Should you wish to discuss any of the issues raised in this article then please contact Alastair Rankin, Michael Graham or Naomi Gaston who will be pleased to advise you.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.