

YOU ARE DENYING YOUR BENEFICIARIES ASSET PROTECTION IF YOU THINK ALL TRUSTS ARE THE SAME

By Katherine A. Barski, Attorney, Bogin, Munns & Munns, P.A.



Planning how to leave your assets to your intended beneficiaries is often as important as what assets you leave them. But understanding your options can be overwhelming and oftentimes, people are not even advised about the various categories in which to structure an inheritance. Most people think: “I have a trust; I’m avoiding probate, that is it.”

Using a revocable trust in estate planning can avoid probate and save time and money on administration at death. It also provides efficient management during lifetime incapacity. But generally, a trust is structured so that beneficiaries receive their inheritance outright all at once or even in stages at certain ages. These trust plans fail to provide the greatest gift of all – asset protection.

Continuing protective trusts give the beneficiaries use and access to the inheritance, while protecting it from divorce and other creditors. In today’s litigious society and with the prevalence of divorce, people are constantly seeking ways to protect assets. While getting creditor protection for oneself can be very difficult and oftentimes involves giving up control, such creditor protection can be readily given to beneficiaries after death through continuing protective trusts.

With a typical protective trust, after someone’s death, the beneficiary’s share of the estate is set aside in a separate trust for the benefit of the beneficiary, rather than just cutting a check for that beneficiary’s share. The beneficiary can be trustee (i.e. money manager) of his or her own trust, or the trustee can be an independent party or institution. The trustee makes distributions to the beneficiary, or on the beneficiary’s behalf, for the beneficiary’s health, education, support,

and maintenance. This is an ascertainable standard, yet flexible enough to allow the beneficiary to utilize the funds.

The trust can provide that the beneficiary can distribute among his or her descendants either during life or at death. The beneficiary can also be granted the power to distribute to the beneficiary’s spouse or charities if there are no descendants. If no power is granted or if it is not exercised, the trust continues along the bloodlines down to the beneficiary’s descendants or to your descendants. This is known as a dynasty trust because it can benefit not only your children but also your grandchildren and further descendants, as long as assets remain in trust.

Divorce protection is a benefit of these trusts. Because many beneficiaries blend inherited assets

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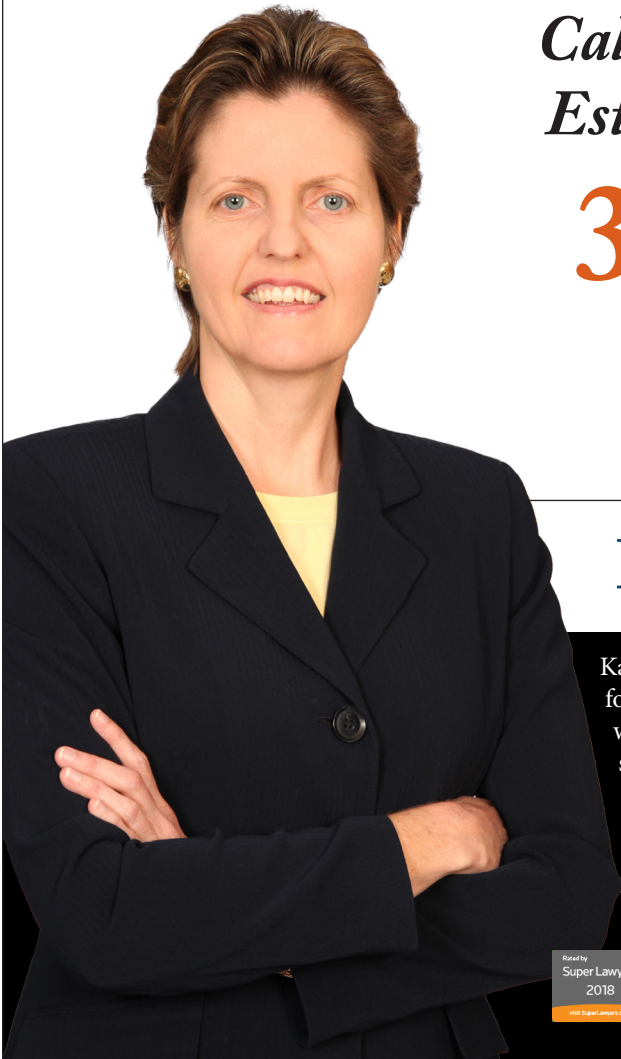
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Katherine A. Barski began her career with the Federal Government, clerking for the Federal District and Appellate Courts and working as a trial attorney with the U.S. Department of Justice. She then returned home to Florida where she has practiced for the past eighteen years in estate planning, probate and taxation. Her experience ranges from Medicaid planning to estate tax avoidance for taxable estates, and all aspects of planning and administration in between. She is the managing attorney for the Bogin, Munns & Munns, P.A. office in The Villages.

Katherine also lives in The Villages and enjoys the active community lifestyle. More information about Katherine can be found on www.boginmunns.com.



with other assets of the marriage, divorce courts oftentimes partition these assets between spouses. Also, the spouse has access to the assets during the marriage and can spend the inheritance you left behind. By maintaining assets in a continuing protective trust, rather than distributing the assets outright, the assets continue to be separate and identifiable. They will not be co-mingled and transformed into marital property.

Keeping assets in trust and along the bloodline also protects from the situation where a beneficiary dies, leaving his or her outright inheritance to a spouse, who then remarries. If that surviving spouse has children from another marriage, it is possible your assets that your child inherited will be diverted from your blood heirs.

With the continuing protective trust, spendthrift provisions will prevent a beneficiary's creditors from having access to the trust assets. The beneficiary will be unable to pledge assets to secure a loan or give away his or her interest in the trust. Creditors cannot access the trust assets because the beneficiary will not own the trust assets. One might think creditor issues only

involve those who make risky investments or who have drug or gambling issues, but oftentimes it can be an unanticipated medical catastrophe that forces someone into bankruptcy, or even a failed business. In addition, if a beneficiary does not have adequate insurance, litigation from an automobile accident or other injury causing event can expose personal assets to claims.

Finally, continuing protective trusts provide tax protection in that

This type of planning should be drafted with flexibility and it is important to address all possible future contingencies given the ongoing nature of these trusts. Powers can be given to remove or add future beneficiaries, change administrative provisions to address future tax law revisions, and to postpone or limit distributions if a future beneficiary is disabled and receiving Governmental benefits.

Trusts offer benefits far beyond minimizing time and costs of administration at incapacity and death. A protective trust can protect your estate from the creditors, including a divorce, of the beneficiaries inheriting the estate. And wealth can be kept along bloodlines. You earned, grew and protected your wealth during your lifetime, why not give your beneficiaries and future generations the ultimate gift of a creditor protected dynasty inheritance. ■



estate and generation skipping tax exemptions are locked in and the inheritance can grow for generations without being subject to these taxes in the future. The continuing trust will be responsible for tax on income that trust assets earn annually however.

Katherine A. Barski is an estate planning and administration attorney at the Villages office of Bogin, Munns & Munns, P.A., with over eighteen years experience in wills, trusts, and estates. For more information, call for a complimentary consultation with Katherine at 352-391-6031.

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