

strategies

WHAT DOES A DOMESTIC TRUSTEE DO?

When a trust is created, two parties are required. The first is the person who creates or settles the trust and that person is frequently referred to as “Grantor”, “Settlor”, or sometimes “Trustor”. The second party is referred to as the “Trustee” and this is the person entrusted with holding your assets.

When a Revocable Living Trust (RLT) is created, the settlor and the trustee are usually the same person. The purpose behind an RLT may be probate avoidance or estate tax reduction or providing a vehicle for lifetime management of the settlor’s wealth if the settlor should become disabled. While these are also of concern with a person who is interested in protecting their wealth from future lawsuits, asset protection is usually the paramount concern and serving as the trustee of your own trust will expose the trust assets to all of your creditors’ claims. For this reason, when dealing with asset protection concerns, one or more trustees will be named, and the settlor and settlor’s spouse will be prohibited in the trust agreement from serving in this capacity.

The selection of a domestic trustee is a personal decision and will usually include one or more of your trusted friends, relatives or advisors, such as a CPA, attorney, business partner, office manager, or any other confidant.

The person whom you select will invariably want to know what their duties or responsibilities will encompass. While these duties are dependent on how the asset protection plan is designed, some general guidelines will be applicable to most domestic trustees.

The domestic trustee’s first obligation will generally be to sign the trust agreement, signifying their willingness to manage the assets held in the trust in accordance with the terms of the trust document. As part of this function, a domestic trustee will need to accept assets transferred into the trust, keep a record of what the trust owns, and sign and file the trust income tax return once the same is prepared.

A trustee has no obligation to use any of their own personal assets to satisfy the financial obligations of the trust (otherwise no bank would ever serve as a trustee!)

Most asset protection trusts are structured with two or more trustees and since most “family” and “friend” trustees don’t want

to be involved with long term litigation, they frequently resign to avoid involvement with any lawsuits. If this were to occur, then the other acting trustee would assume the duties previously being provided by the domestic trustee.

Most asset protection structures are created to minimize the need for the trustee’s involvement. This is done for several reasons, one of which is to help keep the foreign and/or domestic trustee fees to a minimum and the second is to provide more control to the settlor. Two methods commonly used to accomplish this are the family limited partnership and the limited liability company. With both



of these entities, the decisions are made by either the general partner or the LLC manager; however, the entities are owned by the trust. This separates ownership from control. The trust owns the property or entities, but the client maintains control over the management of an entity by either serving as the manager or general partner or by naming a financial advisor or trusted acquaintance to manage the entity.

For Further Information on Estate Planning or Asset Protection Strategies, Please Contact:

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