TUCKER ELLIS LLP

**CLIENT ALERT** **FEBRUARY 2013**

## NEW OHIO ASSET PROTECTION TRUST OFFERS SHIELD FROM CREDITORS

With the adoption of the Ohio Legacy Trust Act (the Act) that becomes effective on March 27, 2013, Ohio joins 13 other states that permit domestic asset protection trusts. These are irrevocable trusts into which people transfer assets so the assets can be protected from creditors' claims if the statutory requirements are fulfilled. The new Ohio Act is considered by some experts in the field of asset protection to be one of the top five such acts in the United States. Persons concerned about exposure to claims of creditors should consider using this technique when planning their estates.

The Act is an important development for persons willing to transfer assets to an Ohio trustee of an Ohio Legacy Trust (Trust). The Ohio trustee could be a person residing in Ohio, including the transferor's spouse or an Ohio corporate trustee. The transferor is not permitted to be the trustee of the Trust; however, the transferor can be a beneficiary of the Trust either alone or with other Trust beneficiaries. Also, the transferor can have the right to:

- veto distributions from the Trust;
- withdraw up to five percent (5%) of the Trust assets each year in addition to distributions authorized by the Trust Agreement and made by the trustee;
- provide directions concerning Trust investments;
- remove and replace the trustee;
- continue to live in a residence held in the Trust; and
- direct that Trust assets be distributed to anyone other than the transferor or the transferor's creditors, estate, or creditors of the transferor's estate.

One of the requirements in connection with the transfer of assets to the Trust includes an affidavit signed by the transferor under oath. The affidavit must state that (1) the assets being transferred to the Trust are not from an unlawful activity; (2) the transferor has the right to transfer the assets; (3) the transfer won't make the transferor insolvent; (4) the transferor doesn't intend to defraud the transferor's creditors; (5) there are no court or administrative actions pending that are not identified in the affidavit; and (6) the transferor does not intend to file for bankruptcy.

Once the Trust has been properly established and funded, most of the transferor's creditors are precluded from seizing assets in the Trust. Certain creditors can seize Trust assets if they take action within a relatively short period of time. Child support can be collected from the Trust. If assets are placed into the Trust after the transferor marries, the spouse or former spouse can collect alimony, support, and property from the Trust; however, if the Trust is established and funded prior to the marriage, the assets in the Trust are protected from claims of the spouse or former spouse.

If the transferor is a beneficiary of the Trust, the transferor will be subject to income tax on income earned by the Trust. The Trust can include provisions authorizing distributions to pay the income tax. Also, the Trust assets will be included in the assets of the transferor that could be subject to federal estate tax if the value of all assets of the transferor at death exceed the value of assets exempt from federal estate tax.

For this technique to be effective, action should be taken before events arise that could cause claims.

## ADDITIONAL INFORMATION

Our estate planning attorneys will be pleased to meet with you to discuss how Trusts that comply with the Act may fit into your estate plan. Please contact any of the following Tucker Ellis attorneys:


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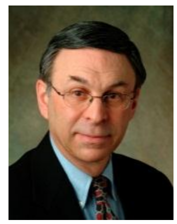

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