An inheritance protection plan

Estate planners and trust officers often hear the question: "How can I keep my money out of the hands of my child's spouse?" There can be many motivations for this attitude—perhaps the son-in-law or daughter-in-law lacks financial maturity, or has a substance abuse problem, or the parent thinks that the marriage itself might not last. In the event of a divorce, there could be a question about whether an inheritance has become marital property, which could compromise the value of the financial resource.

Here is a true story about how one father resolved this problem. Joseph and Terry were married in 1985. During the course of the marriage, Terry's father established six different irrevocable trusts for his descendants. Terry and her four sisters were co-trustees of all six trusts. The sisters and their children were discretionary beneficiaries of the trusts. No beneficiary could force a trust distribution, and any distributions required a majority vote of the trustees. In 2013, 2014, and 2015 each co-trustee took a $50,000 distribution, including Terry.

Joseph sued for divorce in October 2015. In June 2016 he petitioned to include Terry's trust interests in the marital assets so that he could share in any trust distributions. Terry counter-sued for divorce in July 2016, and she argued that her interest in the trusts was too remote to be touched by the divorce proceedings.

The trial court agreed that because there was no provision for mandatory distributions, and because no distributions could be made without a majority vote of the trustees, Terry's trust interest was too speculative to be considered marital property. Joseph's attempt to claim part of the trust or its distributions was rejected. The Indiana Court of Appeals recently affirmed that decision.

Decisions on matters such as these are governed by state law, and so may vary from state to state. The precise terms of the trust also may be a factor. To learn more, consult with your estate planning attorney.

(November 2018)

© 2018 M.A. Co. All rights reserved.