

AUGUST 2009 ESTATE PLANNING NEWSLETTER

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To: Clients and Friends
From: A. Kel Long, III
Re: News from the Estate Planning World

CREDITOR PROTECTED TRUSTS FOR DESCENDANTS

When discussing trusts for children (of any age) with a client, one advantage of lifetime trusts that I mention is that the trust cannot be attached by the child's creditors. In today's environment that statement usually generates some interest. But when I define creditors to include a spouse in the event of divorce, I often get a much stronger reaction, particularly when the family has already experienced divorce or is concerned about a son or daughter "in-law" becoming an "out-law"!

Consider this fact pattern: Your child's credit card company calls you to collect on a credit card you have nothing to do with. When they ask you to pay, you politely remind them that you are not required to pay your child's creditors from your assets. Now change the fact pattern to a trust environment. You leave money/assets to a trustee to hold for your child's needs and you also instruct the trustee to not pay the child's creditors with your money. Because your child does not legally own the trust assets, the creditor cannot demand payment from the trustee. If properly drafted, this trust will also not be subject to estate tax at the child's death.

Note that there are a few exceptions under state law to the creditor protections, such as for child support and federal taxes, but those are often limited amounts. It is the lawsuit or divorce that we are normally more concerned about and that are fully protected. Keep in mind that the trust can also be drafted for flexibility to allow the child to receive liberal distributions such as to maintain his/her accustomed standard of living. The child can also be named to serve as trustee upon attaining a mature age. Once the flexibility combined with the creditor protections of the trust are fully understood, the child will see the trust as superior to receiving their inheritance outright.

LIFE INSURANCE – HOW MUCH SHOULD YOU HAVE?

Working parents with young or school age children need wills with properly drafted trusts. The trust should be designed to provide for the needs of the surviving spouse and the children's education. But there also needs to be something to go into the trust in the event the working parent dies young. That something is often life insurance, with a 20-year level term policy often being chosen. Frequently, a client turns to me for a suggestion on how much life

