

Benefits of an Ohio Legacy Trust

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As a leading asset protection state, Ohio permits individuals to create personal trusts, be the beneficiaries of those trusts, and use those trusts to protect their assets from nearly all future creditors.

The Ohio Legacy Trust Act, or OLT, allows you to protect your assets from future creditor claims but still manage trust assets and retain the benefit of those assets. Under the terms of the Ohio Legacy Trust Act, an OLT must be an irrevocable trust with limited options to change the trust terms in the future. Despite this requirement, you may draft an OLT to give you the rights and powers to:

- Receive the income from the OLT;
- Use a house, real estate, or other personal assets (tangible personal property);
- Receive or use any assets in the OLT through the Trustee’s discretion;
- Remove a Trustee and appoint a new one at any time;
- Control the investments in the OLT;
- Change the beneficiaries of the OLT at any time, effective during lifetime or after death, with a few exceptions;
- Veto a distribution from the OLT;
- Provide for the use of OLT income or assets to pay income taxes due on
- Provide for the use of OLT income or assets to pay all or any part of your debts after death, the expenses of administering your estate, or any estate, gift, generation-skipping transfer, or inheritance tax;
- Provide that some or all the trust assets will pour back into your estate or revocable trust upon your death.

Generally, the Ohio Legacy Trust Act prohibits a creditor from bringing a claim against assets held in an OLT, against the person who created the trust, the Trustee of the OLT, or against any person involved in the counseling in connection with the drafting, administration or funding of

the OLT. For a claim to be successful, the creditor must seek to void a specific qualified transfer(s) to the trust (called a “disposition”) because that particular transfer(s) to the OLT was made with the specific intent to defraud that creditor. Furthermore, the creditor must prove this by clear and convincing evidence, which is a high legal standard to meet.

Importantly, creditors only have a limited time to bring a claim within a designated time frame. Generally, that limit is eighteen months after a particular transfer is made to the OLT (each transfer). Or, for a creditor who became a creditor before the transfer(s) at issue was made, within thirty-six months—so long as a claim is filed within six months of when the transfer was or reasonably could have been discovered.



The rules for an Ohio Legacy Trust are extremely complex. When creating an OLT, individuals should rely on the experience of a qualified attorney to achieve maximum protection.

An affidavit must be executed for each OLT disposition, either before or substantially near the time of the disposition. The affidavit must be notarized and contain certain statements under oath, including the following:

- That the property transferred to the trust was not derived from unlawful activities;
- That the transferor has full right and title to transfer the property;
- That the transferor will not be rendered insolvent immediately after the transfer;
- That the transferor does not intend to defraud any creditor by reason of the transfer;
- That there are no pending or threatened court actions, except as identified;
- That the transferor is not involved in any administrative proceedings, except as specified;
- That the transferor does not contemplate the filing for relief under the Bankruptcy Code at the time of the transfer.

To qualify, an OLT must meet the following requirements:

- Name at least one Trustee other than the creator of the trust and who, if a natural person, is a resident of the State of Ohio, or if not a natural person (such as a bank), is authorized to be a trustee in Ohio;

- Expressly incorporate the laws of Ohio to govern the OLT;
- Specifically, provide that the OLT is irrevocable; and,
- Contain a spendthrift provision restricting the voluntary and involuntary transfer of a transferor's interest in that trust.

There are a few exceptions to the creditor protection of an OLT, often referred to as "exception creditors." Those include any debt a transferor owes for payment of child support and spousal support, alimony, or in connection with the division of property in favor of the transferor's spouse or former spouse, but only to the extent the transferor was married to the spouse on or before the particular transfer(s) to the OLT at issue was made.

Other creditors, like the IRS, may also be exception creditors. Also, suppose you are concerned about protecting your assets from the cost of long-term care or about qualifying for benefits such as VA Aid and Attendance Pension or Medicaid. In that case, the trust must be specifically drafted to accomplish those purposes. Special account must also be taken to protect those same assets from the creditors of heirs, depending upon their unique circumstances.

**If you have questions about Ohio Legacy Trusts,
contact Baker Law at 567.806.5200.**



801 West South Boundary | Suite C
Perrysburg, OH 43551
567.806.5200
chad.baker@bakerlawltd.com

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