



## **OHIO LEGACY TRUSTS**

### *Hang on To Your Buckeyes*

Under traditional legal principles, a person cannot create a trust for his or her own benefit and take advantage of the asset protection normally afforded to assets held in trust. However, a growing number of states are departing from the traditional rule and allowing the use of “self-settled” or “domestic asset protection” trusts. Ohio joined this group in 2013 with the passage of the Ohio Legacy Trust Act, which is one of the most favorable asset protection trust statutes available.

#### **Ohio Legacy Trust Act**

- The act allows a person (not just an Ohio resident) to make an irrevocable trust under which he or she is a beneficiary *and* protect the trust assets from his or her creditors.
- The creator of an Ohio Legacy Trust can retain the following rights with respect to the trust:
  - The right to receive distributions of income and principal in the trustee’s discretion.
  - The right to withdraw up to 5% of the trust principal each year.
  - The right to veto a distribution from the trust.
  - The right to control how trust property will pass to other beneficiaries after the creator’s death.
  - The right to remove and replace trustees.
  - The right to manage trust investments.
- An Ohio Legacy Trust must have a trustee located in Ohio, which can be a corporate trustee or individual.
- The creator must also execute an affidavit of solvency swearing that:
  - The assets funding the trust are not from illegal activity;
  - He or she is the rightful owner of the assets funding the trust;
  - He or she will not be rendered insolvent after funding the trust;
  - He or she is not transferring assets to the trust with the intent to defraud creditors;
  - He or she is not a party to any undisclosed court or administrative proceedings; and
  - He or she does not intend to file for bankruptcy.
- After establishing an Ohio Legacy Trust, creditors have 18 months to bring claims against the trust.
- Once the 18-month period lapses, future creditors, with limited exceptions, will not be able to collect against the trust assets.
- Thus, a properly established Ohio Legacy Trust can provide significant asset protection.

#### **Is an Ohio Legacy Trust Right for You?**

- An Ohio Legacy Trust is an excellent vehicle for business owners and professionals with a high exposure to liability.
- An Ohio Legacy Trust is a potentially superior alternative to a prenuptial agreement, as assets contributed to the trust prior to marriage should not be available to the creator’s spouse in the event of divorce.
- Lastly, an Ohio Legacy Trust is perfect for taking advantage of the significant current lifetime gift tax exemption that will sunset at the end of 2025, as the trust can be structured to be a completed gift for federal gift tax purposes and excluded from the creator’s gross estate at death even if he or she remains a permissible recipient of trust assets.