...continued from inside

Are any assets automatically protected from creditors?

Under Nevada statute, certain assets are exempt from creditors' claims. The purpose of the statute governing exemptions of certain property from execution is to secure to the debtor the necessary means of gaining a livelihood while doing as little injury as possible to the creditor.

The following are several assets which are exempt from creditor claims:

- **Homestead up to $550,000**
- **Family pictures and keepsakes**
- **Household goods and furnishings up to $12,000**
- **One vehicle worth up to $15,000**
- **75% of disposable earnings during a week or 50 times the current minimum wage, whichever is greater**
- **All money, benefits or privileges from life insurance**
- **Up to $1,000,000 held in an individual retirement account (IRA) or 100% of assets held in a federal pension or profit sharing plan**

The above is not an exhaustive list, and may not be exempt under Federal law. For a more complete list, please see Nevada Revised Statute 21.090.

How do I get started?

To get more information or to have a discussion about how asset protection planning could benefit you and your loved ones, please contact JEFFREY BURR today to schedule an appointment.

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CLIENT FOCUS

Estate Planning Still Essential, Despite Increased Exemptions

The Tax Cuts and Jobs Act (TCJA) reduces individual and corporate tax rates, eliminates a bevy of deductions and makes a host of changes to how Americans can preserve their wealth. Although the Act falls short of repealing the death tax, it doubles the amount an individual may transfer tax free, either in his or her lifetime or at death. Effective January 1, 2018 (and expiring December 31, 2025), the combined gift and estate tax exemption and the generation-skipping transfer (GST) tax exemption amounts double from an inflation-adjusted $5 million to $10 million. The amount of the estate tax exemption and GST exemption was changed to $11.18 million for individuals, or $22.36 million for a married couple for 2018. Both exemptions will continue to increase with inflation. Both will also revert back to their current levels at the start of 2026. (Congress could also lower the exemptions before then.) The increases present several opportunities for high-net-worth individuals to consider:

- The higher exemptions may shield many families from estate taxes entirely, allowing them to simplify their planning strategies.
- Individuals who have already made gifts using the full lifetime exemption now have an opportunity to make additional gifts.
- Individuals may want to take advantage of the increased GST exemption to create GST-exempt trusts. Those with existing trusts subject to the GST tax may want to consider early distributions.
- It makes sense to review old life insurance trusts intended to pay an estate tax, and determine if the plan still makes sense or if it should be modified for other asset protection.
- If you don't want to adjust your gifts now, consider updating your durable powers of attorney to include a gift provision. If you became incapacitated, that would allow your agent to leverage the new exemptions.

Other Elements of the Changes

Here are some other important planning-related factors:

Dated formulas: Estate plans should be reviewed immediately if trusts are funded using a formula linked to the old estate tax or GST exemptions. For someone who dies before 2026, these trusts may be funded more than intended, to the detriment of the surviving spouse.

Conflicts with state law: There's a growing difference between the federal tax exemptions and similar exemptions afforded under the laws of 15 states and the District of Columbia that impose a state inheritance tax. It's unknown how states will respond to the tax changes, so existing estate planning strategies may still be relevant.

Special situations: Don't get complacent and ignore estate planning because of the higher exemptions. Estate planning isn't just about taxes. You want a plan that's flexible enough to protect surviving spouses, minor children and special needs beneficiaries. Other planning nuances may include beneficiaries with special needs, asset protection from beneficiaries' creditors or ex-spouses, family business succession, and more. Consult an estate planning attorney for guidance.

table of contents

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FIDUCIARY DUTY OF A SUCCESSOR TRUSTEE

Many of our clients choose to appoint family members or trusted friends to serve as the successor trustee of their trust agreement in the event of their incapacity or death as grantors of the trust. While the nomination of family members or other trusted friends is understandable due to the existing relationship of trust, often the named successor trustee is unaware of the time commitment, the fiduciary duties, and the potential liability associated with the role of trustee.

A trustee has a number of fiduciary duties, including but not limited to, the duty to act in accordance with the trust agreement, the duty to act in good faith, the duty to act in the best interest of the beneficiaries, the duty of loyalty, and the duty to protect the trust property. In fulfilling these duties, it is vital to avoid any act of self-dealing, imprudence, neglect, mismanagement, or other breach of fiduciary duty. There are several uniform acts, state statutes and case law, which impose affirmative duties on trustees to take specific actions and impose liability for the failure to do so.

As part of a trustee's fiduciary duties, it is very important to keep detailed records, including complete accounting records of trust assets and disbursements made on behalf of the trust. It is very important that the trust accounts and records remain separate from the trustee's personal records to protect from accusations of self-dealing by the beneficiaries.

A trustee is responsible for the management of all stocks, bonds and other securities. The trustee has a duty to diversify, keeping in mind the different needs of distinct classes of beneficiaries. This duty to diversify extends to allocating administration expenses between income and principal of the trust to ensure impartial administration among different classes of beneficiaries. This duty to diversify should be carried out based on the terms, purpose, requirements, and other circumstances outlined in the trust agreement.

The timing or holding of trust assets are within the trustee's reasonable discretion. If the trust is a will substitute and assets are to be liquidated shortly after the grantor's death, it is advisable to liquidate securities into cash to avoid market declines.

A trustee also has the duty of marshaling, safeguarding, inventorying and accounting for all trust assets. Regarding liquid assets, an accurate record must be kept of any deposits into and withdrawals from any trust account, showing the amount and sources of each deposit and the amount and purpose of each check drawn, so as to be reflected in the subsequent accounting for the Trust estate.

For many individuals, serving as a successor trustee may be a liability or a burden that they are not comfortable with or may require a time commitment that a potential trustee cannot afford. We recommend that a grantor of a trust consider these issues in the nomination of successor trustees or any individual in a fiduciary capacity and examine if their intentions may be better carried out by a professional trustee.

One of the many benefits of being a JEFFREY BURR client is access to our exceptional Trust Administration team. They bring over 30 years' experience in assisting and protecting individual Successor Trustees in the administration of a Trust. JB

ASSET PROTECTION 101

If estate planning is your introduction to protecting and preserving your legacy, then asset protection is the advanced course. Having a will or trust is only the beginning of creating an overall plan for the future. You also want to engage in asset protection planning to preserve the assets you have and maximize the ultimate transfer of wealth to your beneficiaries. Asset protection is a specialized tool to be used in conjunction with a comprehensive estate plan, necessary to protect hard-earned assets from creditors and frivolous lawsuits.

At JEFFREY BURR, we want to be the guide for our clients as they initially create an estate plan, engage in more advanced tax and asset protection planning as their wealth grows, and adapt to changing life circumstances. We know that in order to be the best guide, our clients need to be informed about the various tools at their disposal to ensure their estates are preserved and protected. We've compiled a few of the most frequently asked questions about asset protection. If you're interested in enhancing your estate plan with asset protection, contact JEFFREY BURR today.

Who should consider asset protection? When should I be concerned about asset protection?

A vital component of estate planning involves preserving and protecting one's wealth which, for most people, has likely required the better part of a lifetime to accumulate. Today, asset protection strategies are being implemented with greater frequency to stem the swelling tide of damaging lawsuits and creditors' claims.

Some such asset protection strategies include irrevocable trusts, gifts, homestead exemptions, family limited partnerships, limited liability companies, offshore trusts and domestic asset protection trusts (what we call Nevada OnShore Trusts® or "NOSTS®"), or a combination domestic and offshore asset protection trust we call the PASSPORT TRUST®.

Independent contractors, business owners, and providers of professional services such as doctors, dentists, lawyers, accountants, engineers, architects, and insurance brokers, who are exposed to certain risks and liabilities in the business world, should consider implementing an asset protection strategy. Also, anyone who is concerned about losing hard-earned assets due to accidents and misfortune should consider an asset protection trust.

What kinds of assets can be protected?

Most assets that you own may be protected through the use of a properly structured asset protection trust. Those assets may include:

- Bank accounts
- Investment accounts
- Real property
- Rental properties
- Business interests (such as a membership interest of an LLC, or stock held in a corporation)
- Personal property

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