

## The Weekly Scenario: How Can a Trust Protect My Children's Inheritance?

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By Steven E. Shane

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One of the main reasons for estate planning is to provide loved ones with protection from claims of future creditors and divorcing spouses or lawsuits. If you leave your property to your child as an outright distribution, the property will not necessarily be protected.

### 'Spendthrift' Protection

There is a longstanding concept in trust law known as 'spendthrift' protection. These provisions state that the Trustee will have sole control to make distributions from the Trust without interference from others. The spendthrift clause prevents a third party (e.g., creditor) from being able to compel the Trustee into making distributions of trust property for the benefit of the third party.

### Protection from Creditors

Under the spendthrift rules of most states, a person is free to leave assets in the trust for another person, with specific language in the trust specifying who, besides a trust beneficiary, can have access to the trust assets. If the trust includes a 'spendthrift' clause that specifically states that trust income and principal is not to be available for payment to a trust beneficiary's creditors, then as a general rule the trust would be immune from attack by a beneficiary's creditors. This strong protection would apply regardless of the amount or nature of a beneficiary's liabilities and would include protection of the trust assets if the child were to go through a divorce.

### Variation Between States

However, the extent of protection offered by a trust with a spendthrift clause will depend upon state law. In some states, certain creditors are still permitted access to the trust. This might include obligations for alimony, child support or payments to creditors who have provided certain 'essentials of life' to the beneficiary.

**As always, if you have any questions or would like to learn more, please contact Steve Shane at [sshane@offitkurman.com](mailto:sshane@offitkurman.com) or [301.575.0313](tel:301.575.0313).**