

Publications

Client Alert: Have Your Cake and Eat It (Too)

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Asset protection planners in Ohio will soon have one more arrow in their quivers. Effective March 27, 2013, Ohio law will permit the creation and funding of a domestic asset protection trust. In enacting the "Ohio Legacy Trust Act," Ohio will become the 15th U.S. state to authorize the creation of a domestic asset protection trust.

Put simply, the Ohio Legacy Trust Act is intended to permit individuals to protect their assets from most creditors while still benefitting from those assets. The planning involves transferring assets to a so-called "legacy trust" while retaining certain rights in such legacy trust. The permissible retained rights in a legacy trust include the following:

- The right to receive income from the trust
- The right to withdraw up to 5% of the value of the trust assets in a given calendar year
- The right to receive distributions of principal from the trust in the discretion of the trustee
- The right to veto distributions from the trust
- The right to use real or tangible personal property owned by the trust
- The right to effectively control the disposition of the trust assets upon death
- The right to remove and replace an advisor or trustee
- The right to use trust assets to pay income taxes
- The right to serve as advisor to the trustee in connection with investment decisions

A trust agreement creating an Ohio legacy trust must be in writing, appoint at least one qualified trustee, expressly incorporate Ohio law, state that it is irrevocable, and contain a spendthrift provision applicable to any trust beneficiary. A trustee that materially participates in the administration of a legacy trust is a qualified trustee if such trustee is a resident of Ohio (if a natural person) or a qualifying trust company or bank (if not a natural person). In addition, if the individual

funding the legacy trust will also be a beneficiary of such legacy trust, he or she must sign a qualified affidavit no later than the time that assets are transferred to the legacy trust. Such qualified affidavit must include certain statements that relate to the property transferred to the legacy trust and the individual making the transfer to the legacy trust.

If you would like to learn more about the Ohio Legacy Trust Act and whether establishing a legacy trust might be worthwhile for you, please contact your Vorys attorney.