

## The New Ohio Legacy Trust

### ***What is an Ohio Legacy Trust?***

An Ohio Legacy Trust shields assets from potential creditors. Historically, it has been against public policy to establish such a trust. As a result, some Americans moved assets offshore. In 1997 two states changed their laws and allowed trusts to bar creditors. They are called domestic asset protection trusts (DAPTs). Since then, other states have followed suit.

Effective March 27, 2013, Ohio became the 15<sup>th</sup> state to permit the use of a DAPT under the Ohio Legacy Trust Act. Legacy Trusts are useful to individuals in high-risk endeavors such as physicians, entrepreneurs and real estate investors.

### ***How does an Ohio Legacy Trust work?***

An individual called a “settlor” signs a trust agreement that creates a legal entity. He or she then moves assets into the trust. The settlor appoints a trustee who has the discretion to distribute the income and/or principal to the settlor. The settlor cannot be the trustee, but any Ohioan, including family members, can be appointed. Debts and obligations that arise after the creation of the trust are not collectible unless they fall under one of the limited exceptions.

### ***What are the Exceptions Under the Ohio Legacy Trust Act?***

A settlor may not create a Legacy Trust to:

- Defraud a specific creditor;
- Avoid or evade child support and alimony payments if money was placed in the trust after the marriage; or
- Make him or her insolvent

A preexisting or future creditor must bring an action to set aside a transfer to a Legacy Trust within 18 months after the settlor placed the money in the trust.

### ***What are the Requirements to Create an Ohio Legacy Trust?***

In addition to several technical points, to set up an Ohio Legacy Trust:

- The trustee must reside in Ohio or be an Ohio entity authorized to do business in Ohio; and
- It must be irrevocable.

A settlor must also swear to the following under oath:

- The assets are not from unlawful activity;
- The settlor owns the assets;
- The settlor remains solvent after the assets are transferred;
- The settlor does not intend to default creditors;
- The settlor is not involved in any unidentified court or administrative proceedings; and
- The settlor does not intend to file bankruptcy.

### ***What are the Disadvantages of an Ohio Legacy Trust?***

- Assets placed in an Ohio Legacy Trust are no longer in the settlor’s control.
- Ohio Legacy Trusts may not be recognized by other states.
- Ohio Legacy Trusts only apply to unknown future creditors.
- Ohio Legacy Trusts may have to be publicly registered in the future.



Mark S. Reckman, Esq., Wood & Lamping,  
513/852-6054, [msreckman@woodlamping.com](mailto:msreckman@woodlamping.com)



Alexandra P. Kwiatkowsky, Esq., Wood & Lamping,  
513/852-6011, [apkwiatkowsky@woodlamping.com](mailto:apkwiatkowsky@woodlamping.com)