

Chambliss Estate Planning

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People

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Practices

Estate Planning

Protecting Assets Through a Tennessee Investment Services Trust

Over the last 20 years, Tennessee has become one of the most trust-friendly states in the nation. For example, the Tennessee Investment Services Act allows for the creation of an asset protection trust called a Tennessee Investment Services Trust ("TIST"), which provides asset protection but still allows some control over the assets.

What is a Tennessee Investment Services Trust ("TIST")?

Generally, to create a trust, a person (called the grantor or settlor) gives property to a person (called a trustee) to hold for the benefit of the trust's beneficiaries. Historically, all the states prohibited establishing a trust for your own benefit that was designed to protect assets from creditors (a self-settled spendthrift trust). However, several foreign countries allowed such trusts, and U.S. citizens were protecting assets using foreign trusts. Tennessee is currently one of about 16 states that allow a self-settled spendthrift trust, also commonly referred to as a domestic asset protection trust. Tennessee's version is called a TIST. The trustee of a TIST decides how the money is spent on the beneficiary (who is also the grantor), and creditors of the beneficiary/grantor cannot reach the trust funds once all of the statutory requirements are met. A creditor CAN collect against money that has been distributed to the beneficiary from the trust.

What are some of the advantages of a TIST?

- Trust assets are exempt from claims of creditors (so long as the claim is made more than two years after the trust is established)¹
- Assets of the trust will not be administered and distributed under probate after grantor's death.
- The grantor can retain some rights over the trust property, including input in investment decisions, the authority to veto distributions, and the right to remove a trustee and appoint a successor

- The trustee may also provide investment advice
- The grantor has more freedom to invest non-trust assets in more speculative or high risk investments with knowledge that all assets are not exposed to the risk

What are the potential drawbacks?

- The cost associated with a third party trustee
- The trust must be irrevocable
- The trust is not a vehicle for reducing estate, gift, or generation skipping taxes
- Less speed and flexibility in changing investments
- The trustee of the TIST must maintain custody of most of the trust assets in the state of Tennessee

How do you create a TIST?

There are very specific statutory requirements for creating a TIST that must be followed in order to obtain the benefits of a self-settled spendthrift trust like a TIST. Most importantly, the grantor must sign a sworn statement prior to the creation of the TIST certifying that the grantor is qualified under the statute to create and fund a TIST.

¹ The creditor protection may not extend to claims for child support, alimony or court-ordered property settlement obligations related to a divorce, depending on the laws of the beneficiary's state of residence.

Please contact us if you are interested in creating a TIST or would like to learn more.