

# Estate Planning Update – 10.08.21

## Section 1.01 Here When You Need Us

Throughout the pandemic, our team has collaborated to implement creative and resourceful solutions to meet the needs of our clients in this uniquely challenging time. While our Chambliss Conference Center is open for scheduled in-person meetings, we continue to be available to meet virtually, as well.

Please do not hesitate to contact us if we can assist you with your elder law, special needs planning, or estate planning needs.

— Dana, Greg, and your Chambliss team

---

## Section 1.02 Spendthrift Trusts: An Effective Strategy for Avoiding Spooky Pitfalls

By: [Isiah Robinson](#)

As we prepare for the Halloween season, there are many reasons to be on edge. These fears may involve ghosts and goblins for some, while others may view estate planning as frightening. Although I have yet to find an effective way to conquer ghosts or goblins, there are tools for alleviating the fears related to estate planning.

One effective tool for protecting, preserving, and transferring assets is a spendthrift trust. Spendthrift trusts can offer protections from an overspending beneficiary and the beneficiary's creditors. These types of trusts operate similar to other trusts in that the trust property is placed in a trust for the benefit of another person. This person is known as a beneficiary. However, these trusts also include a spendthrift clause or provision providing for limitations on the beneficiary's access to the assets.

In a spendthrift trust, the trust's creator (commonly known as a grantor or settlor) establishes the precise rules for distributing trust payments. This strategy ensures that the settlor's wishes are captured in the trust document. These rules can be as strict or loose as the settlor intends. For example, a spendthrift provision can control the amount and timing of the beneficiary's payments.

The settlor also appoints a trustee responsible for making the distributions and managing the trust. A family friend or an institution may be appropriate as a trustee of a spendthrift trust. While the terms of the spendthrift provision control the actions of the person appointed trustee, a reliable entity serving as trustee is crucial to the trust's operation as the trustee acts as an intermediary between the trust property and the beneficiary. The trustee administers trust property on behalf of the beneficiary. In other words, the beneficiary does not have direct access to the trust property.

There are several benefits to a spendthrift trust. As its namesake suggests, many settlors establish a spendthrift trust to preserve trust property when there are concerns of an overspending beneficiary. This trust arrangement allows some structure to disbursements that may otherwise be distributed as a lump sum to a young or financially irresponsible beneficiary. Therefore, the spendthrift provision can potentially provide financial support to the beneficiary over his or her lifetime.

Another advantage of the spendthrift trust is creditor protection. A spendthrift trust can be drafted in a manner that prohibits a beneficiary's creditors from reaching into the trust. For example, in Tennessee, the trustee is allowed to withhold mandatory distributions from third parties such as a creditor. However, Tennessee law does not provide complete protection against creditors as spendthrift provisions are unenforceable against claims of the state to the extent that state statutes allow for it.<sup>1</sup>

As an example of the creditor protections provided, a credit card company will be unable to attach claims on the trust property against a beneficiary of a spendthrift trust. This protection does not ensure that the credit card company will be unable to execute its claim against the beneficiary once the payments are received, but it does ensure that the creditor cannot attempt to come after the trust for funds the beneficiary has not yet received.

Similarly, Tennessee law allows the protection of assets in spendthrift trusts from beneficiaries employed in high-risk professions (i.e., physicians). This means that a creditor or party to a malpractice lawsuit cannot attach its judgment against a beneficiary to the spendthrift trust. The State of Tennessee also extends protections to trust assets in a divorce, so an ex-spouse cannot access the funds of a trust when the spendthrift trust is properly drafted. The rationale for the protection is that the beneficiary does not technically own the trust property.

Spendthrift trusts allow for much-needed flexibility in estate planning. It is one of many tools available to clients as they plan for the future. It is also an option that can be adjusted to each client's particular planning needs.

If you have any questions or want to learn more about spendthrift trusts or any of the various estate and special needs planning strategies available to you, please contact me, [Isiah Robinson](#), or another member of our [Estate Planning Team](#).

<sup>1</sup>Tenn. Code Ann. § 35-15-503.

---

## Estate Planning Resources



## **It's Medicare Open Enrollment Time: Is Your Plan Still Working for You?**

Every year Medicare gives beneficiaries a window of opportunity to shop around and determine if their current Medicare plan is still the best one for them. During Medicare's Open Enrollment Period, which runs from October 15 to December 7, beneficiaries can freely enroll in or switch plans...

[Read More](#)



## **How to Use Intrafamily Loans as Part of Your Estate Plan**

When interest rates are low, intrafamily loans can be a good way to assist a relative (typically a child) with purchasing a house or a family business, and in certain circumstances, they can be used to gift money to the next generation...

[Read More](#)



### **The Perils and Pitfalls of Do-It-Yourself Special Needs Planning**

Among the costs of caring for a dependent with special needs are the fees for professional advice. However, there are so many potential downsides to DIY planning that families do this at their peril...

[Read More](#)

---

## **Also check out...**

### **[Move United OnDemand](#)**

Last month, Move United launched a digital fitness platform designed specifically for individuals with disabilities. See the wide variety of free adaptive fitness classes on the Move United website.

### **[CDC Says Using a Window Fan for Holiday Parties Is Advisable](#)**

The U.S. Centers for Disease Control and Prevention's recommendations for the upcoming holiday season include the idea of using a window fan to keep air at an indoor party as fresh as possible. They suggest that circulating air indoors can ward off the airborne coronavirus, or at least reduce its chances of spreading during home gatherings. Read the NBC News article for details.

---

## **Just for Fun**

### **Optimistic October Calendar**

When things are feeling a bit tough, it can help to set goals. Making your goals achievable and ensuring that you have a few short term as well as longer term goals is a good plan. This month's calendar is full of ideas to help you think about how you can put this into practice.



Source: [actionforhappiness.org](http://actionforhappiness.org)