

THE RISELING REPORT

EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL

A IS OK

EXPLANATION OF THE A TRUST

Introduction

This *Riseling Report* is dedicated to explaining the benefits of using what Riseling & Rhodes, P.C. calls an “**A Trust**”. Throughout this report the term “Riseling & Rhodes” means Riseling & Rhodes, P.C., an Oklahoma Professional Corporation. The term “**A Trust**” as used in this report is limited strictly to the use of that term in a Trust Agreement prepared by an attorney of Riseling & Rhodes.

DO NOT RELY UPON THIS REPORT FOR ANY TRUST AGREEMENT PREPARED BY ANYONE ELSE.

Benefits

CREDITOR PROTECTION DURING LIFETIME.

An **A Trust** provides benefits to the beneficiary of the Trust unlike traditional or common American estate planning. Traditional or typical estate planning in the United States provides that assets be distributed outright, free of trust, to the beneficiary at a certain age such as twenty-one (21) years. The A Trust concept is better because instead of having assets distributed to the beneficiary outright and free of a trust [and subject to levy, execution, or garnishment], the assets are retained, in trust, within the A Trust. By retaining the assets in the A Trust, the corpus (principal) can take advantage of most states’ “**spendthrift**” trust laws. The spendthrift trust laws of most states provide that the assets of a trust are not subject to execution, garnishment, or levy to pay the creditors of the beneficiary.

If the assets are retained in the A Trust, they are not subject to division in the event of divorce. In community property states, the A Trust will prevent the beneficiary’s inheritance from evolving into community property.

Under Oklahoma Law, a Trust A beneficiary's interest can be reached in the satisfaction of claims to the following extent:

1. All income due or to accrue in the future to the beneficiary shall be subject to enforceable claims under the laws of this state for:
 - a. support of a husband, wife, or child of the beneficiary,
 - b. necessary services rendered or necessary supplies furnished to the beneficiary, or
 - c. a judgment based on any such claim under subparagraph a or b; and
2. In all cases not mentioned in paragraph 1 of this subsection, all income due or to accrue in the future to the beneficiary in excess of Twenty-five Thousand Dollars (\$25,000.00) per calendar year shall be subject to garnishment by creditors of the beneficiary and shall be fully alienable by the beneficiary.

Source: **60 Oklahoma Statutes §175.25(B)**

Note that Oklahoma Law only permits income to be siphoned. **The assets (principal) of the A Trust are not subject to execution while the beneficiary is alive.**

CREDITOR PROTECTION AT DEATH

However, the A Trust may not avoid being subject to creditors at the beneficiary's death. There is no Oklahoma Law on this issue. Being conservative, Riseling & Rhodes does not express the opinion that the A trust is protected when its beneficiary dies owing others. This is because there is no restriction or limitation to whom the beneficiary may appoint the principal of Trust A upon the beneficiary's death. This is known as a "general power of appointment". It is believed that the use of a general power of appointment may not keep assets from being subject to the beneficiary's creditors upon the beneficiary's death. **Reminder:** This has not been tested (adjudicated) - the Trust A might be protected.

AVOID ESTATE TAX INCLUSION

Because the power to distribute principal at death is not limited, the assets of the A Trust does not avoid estate tax inclusion in the beneficiary's estate upon the beneficiary's death. Though there is no estate tax avoidance, the A Trust is still attractive for protecting the beneficiary's inheritance from creditors while the beneficiary is living.

In summary, the A Trust is OK for the following reasons:

1. Reduces creditor risk during the beneficiary's lifetime, and
2. Avoids loss of inheritance in the event of divorce (particularly in community property states),

Control

In that most Grantors (also called Trustmakers, Settlers, or Trustors), desire to actually allow beneficiaries to have **control** over their inheritance, a typical Trust A provides that the beneficiary upon attainment of a certain age (usually age **25 years**) commences to serve as a **co-trustee** of that individual's trust share along with the then acting trustee.

Furthermore, when the individual attains another age (usually age **35 years**) the individual beneficiary of a Trust A becomes **sole trustee** of his or her separate Trust A.

Finally, to provide even more control by the beneficiary of the beneficiary's separate Trust A, the Trust Agreement allows the beneficiary, once serving as sole trustee, to appoint the successor trustee of the beneficiary's separate Trust A in the event the beneficiary later ceases to serve as the Trustee of the beneficiary's separate Trust A. However, this is typically limited to descendants of the Grantor, spouse of the beneficiary of the Trust A, or a corporate trustee.

Enjoyment

The beneficiary enjoys the income and principal of the Trust during the beneficiary's lifetime.

INCOME. During the beneficiary's lifetime, the income may be required to be distributed. In other cases, income distributions can be discretionary, such as when the individual is under age 25. In most cases, after the individual beneficiary of a Trust A attains age 25, income is required to be distributed to the beneficiary.

PRINCIPAL. In nearly all cases, principal of the Trust A can be distributed in the Trustee's discretion to the beneficiary for health, education, or support.

DECIDE WHO GETS THE BALANCE. To obtain the benefits described above in avoiding lifetime creditors, the Trust A will have a provision that limits the beneficiary's ability to appoint the principal during the beneficiary's lifetime. This, like many other provisions of a typical Riseling & Rhodes trust agreement, is customized to meet the exact wishes of the client (Grantor).

In the event the beneficiary does not direct where the principal of the beneficiary's Trust A is to be distributed, the typical Riseling & Rhodes estate plan will, by default, provide that it goes to the deceased beneficiary's children equally with right of representation. If the beneficiary does not have any living descendant, then the default provisions provide that it is redistributed among the other Trust As, if any, created upon the Grantor's death.

Disadvantage

The only known disadvantage of using a Trust A is that annual federal and state fiduciary income tax returns are required. However, it is our experience that most income tax preparers can prepare the annual trust A income tax return for relatively little cost.

Conclusion

This Report is not designed to answer every question about the Trust A. If you have any specific question or need further guidance, please contact an attorney at Riseling & Rhodes, P.C.

RISELING & RHODES, P.C.

**Ted M. Riseling
Jeff K. Rhodes
Jason M. Fields**

**2510 E. 21st St.
Inverness Park
Tulsa, OK 74114
(918) 747-0111**

Eastern Oklahoma

**Toll Free Nationwide
(866) 747-0111**

Bartlesville • Broken Bow • Idabel • McAlester
Muskogee • Ponca City • Tahlequah • Tulsa

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