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All I want for Christmas is my Trust Fund Money!!

I wonder how many letters Santa gets with that request. I would guess that most of those letters would be written by older children, and as humorous as it may sound, these requests are made more often than you think. Not to Santa though, but to a Trustee.

Especially in hard economic times, people tend to seek income from every crack and crevice. So now may be the perfect time to discuss "Spendthrifts". What is a Spendthrift? Well, the basic definition of a Spendthrift is one who spends money recklessly or wastefully. Now, we have all experienced times in our lives when we may have made an ill advised purchase or feel as though we wasted money on something that seemed like a good idea at the time. We are not, by definition, Spendthrifts.

A true Spendthrift is someone who has a history of such recklessness or wastefulness to a greater extent and perhaps on a much higher level. Someone who most people would agree, has minimal control over their spending habits.

The classic Spendthrift is usually experiencing significant debt (credit cards, student loans, auto loans, home mortgages) and for the most part is behind in making payments on those obligations.

So how does this relate to the subject of Trusts and estate planning? Well, the issue of Spendthrift is a serious consideration when creating Trusts where one of the beneficiaries is a Spendthrift. The natural concern of the Grantor of the Trust is the preservation of the Trust principal and its protection from the spending habits and debts of the Spendthrift. Hence, the creation of the Spendthrift Trust.

Spendthrift Trusts are usually established with the object of providing a financial benefit for the maintenance of the Spendthrift, while also protecting the assets of the Trust against the Spendthrift's imprudence, extravagance, and inability to manage financial affairs.

A Spendthrift Trust is designed to shield the assets of the Trust from the obligations and creditors of the Spendthrift, while the assets are maintained in the Trust. However, the assets cannot be protected once the funds have been distributed to



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the Spendthrift. With this type of Trust, a creditor cannot compel the Trustee to make a payment to satisfy a debt of the Spendthrift. A creditor, however, can seek payment from funds already received. A creditor's claims to future payments under the trust, however, are restrained.

One of the protections afforded with a Spendthrift Trust is the avoidance of "anticipation" (a term used often in estate planning). The Trust is designed to prohibit the Spendthrift from anticipating a distribution of assets from the Trust because it is designed with to give the Trustee full discretion regarding the distribution of the Trust assets, within the confines of the directives of the trust document. Hence, the Spendthrift can't attempt to satisfy a debt by offering or margining the anticipated distribution to ward off creditors.

Viewing this situation from a different angle, if the Spendthrift, were permitted to transfer his right to receive income from the trust, his poor habits may never be thwarted. On the other hand, by restricting the Spendthrift so that he can do nothing with the income until it is actually distributed, he is more likely to remain protected and forced to deal with his obligations in a different manner.

I should conclude with the note that Spendthrift Trusts are most often created out of the love and concern of the Grantor for the Spendthrift, and with a desire to assist rather than punish for bad habits. Spendthrift Trusts are used significantly for the preservation of assets and are solid estate planning tools.

Anthony J. Medico, Esq., has practiced law for over 22 years. To ask a question for this column, or to receive Medico's free Estate Planning Survival Guide, visit his website at www.medicoandassociates.com, send an e-mail to Amedico@medicoandassociates.com or call (203) 661-8151. You can read most of his previous columns on his Greenwich Time estate planning blog on the internet. Just go to <http://www.greenwichtime.com/blogs> and scroll down until you find him under the business section. Enjoy.