

# BERNIER LAW FIRM

## PLANNING FOR YOUR FUTURE

By: Alberthe Bernier, Esq.

### PROTECTING AN INHERITANCE FROM DIVORCE

Many of my clients are concerned about protecting the inheritance they leave for their children from being lost to divorce or ending up in the hands of in-laws. To address these concerns, I recommend that my clients establish Inheritance Protection Trusts.

For example, Dad dies, his will provides that his assets are to be distributed in equal shares to his two kids, Ava and Xavier. Each child then takes the bank accounts they've inherited, as well as the proceeds from the sale of Dad's home, and then puts them into an account in their own names.

Generally speaking, most states' divorce laws provide that inheritances are non-marital assets that cannot be accessed by a spouse that is leaving the marriage. Suppose however, that Ava takes her inheritance and puts it into a joint account with her husband. By commingling her inheritance with her marital assets, Ava has now destroyed the non-marital characterization of her inheritance. It's now joint marital property that is subject to division in a divorce. Suppose Ava deposited her inheritance into a bank account in her name alone. Ava later dies and is survived by her husband and children. In this instance, the inheritance proceeds nevertheless ends up in the hands of her spouse as Ava never got around to creating an estate plan for herself.

Instead of creating a Will that distributed assets outright to his children, Dad's estate plan should have provided that each child's inheritance should be transferred to an Inheritance Protection Trust.

An Inheritance Protection Trust is a revocable trust that you set up now for your children. Then



when you die, the trust becomes irrevocable and your assets will be divided into each of these separate trusts (one for each child). Each separate trust will be used only for the sole benefit of that specific child. The trust will have language that will allow trust assets to be sprinkled and used for the benefit of that child's children (your grandchildren).

If you believe that a child can manage their trust responsibly, he or she can serve as the trustee of their own Inheritance Protection Trust. This will allow them to enjoy complete access and control over the trust assets, and to invest and use the assets in any way they wish. On the other hand, if you are concerned about a child's ability to manage his or her trust responsibly, you can appoint a bank or professional trustee to manage the trust for them.

When your child passes away, the unused portion of the inheritance trust passes to your child's children, not to your child's spouse. If your child does not have children or does not wish to leave funds to his children, the funds may be left instead to your other children or grandchildren.

Bottom line, Inheritance Protection Trusts ensures that the inheritance you leave your children and grandchildren do not become subject to marital property divorce rules and can keep an inheritance out of the hands of in-laws.