

Asset protection

How a new Ohio law will provide a shield against creditors

INTERVIEWED BY ROGER VOZAR

House Bill 479, known as the Ohio Asset Management Modernization Act (AMMA), is the new law that means Ohio residents will no longer have to set up trusts in other states in order to protect their assets.

“It’s an important piece of legislation,” says Richard H. Harris, partner and chair of the Estate Planning & Probate Administration Practice Group at Brouse McDowell. “Prior to this major change, we weren’t exactly at the forefront in this area of asset protection planning.”

Smart Business spoke with Harris about the legislation, which will go into effect on March 27.

What will the AMMA change?

It contains a number of different protections, but basically it provides better creditor protection across-the-board. One of the more significant provisions is the creation of a domestic asset protection statute known as the Ohio Legacy Trust Act, which, in layman’s terms, means that for the first time an Ohio resident will have the ability to create an irrevocable trust, retain certain beneficial interests in that trust and have the trust assets protected from creditors.

Long-standing law in Ohio and most other jurisdictions provides no creditor protection to settlors of revocable trusts — those trusts which you create during your lifetime to hold your assets for your benefit and which keep the trust assets from being subject to probate at your death. Other jurisdictions such as Delaware, South Dakota and Alaska have enacted statutes that enable an individual to set up a domestic asset protection trust in that jurisdiction that will give some creditor protection to the person who created the

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trust. One of the key requirements in these jurisdictions was that you had to use a trustee who was a resident of the state or a trust company that is legally authorized to operate in that state, and some or all of the trust assets had to be custodied in the state as well. House Bill 479 was enacted, in part, to keep trust assets and the trust administration business in Ohio and to make Ohio competitive with a growing number of other jurisdictions in providing creditor protection to self-settled asset protection trusts.

Are there any exceptions?

Yes. You can’t set up a domestic asset protection trust in Ohio to avoid alimony or child support, or if you already have an issue with a creditor — that would be a fraudulent conveyance. This type of planning is most useful in situations where someone is in a high-risk environment, such as a physician who has a high risk medical practice or entrepreneurs or any high-net worth individual whose work involves a significant amount of risk of personal liability.

What are the other significant creditor protection provisions contained in this new legislation?

One is a significant increase in the homestead exemption. Right now, it’s

\$21,625 per debtor. With the new law, it increases to \$125,000 per debtor and it’s stackable, which means a married couple can protect up to \$250,000 of equity in their house from the reach of creditors.

The legislation also created an optional personal property recording system. Transferors will be able to record a notice of transfer of personal property with the local county recorder. Recording a conveyance of personal property will put all creditors on constructive notice of the property transfer, which will have the effect of cutting off the right of the future creditor to challenge the transfer at a later date. The new legislation also clears up an ambiguity in Ohio law regarding inherited IRA accounts. Ohio’s exemption statute that exempts certain property from being subject to attachment by creditors has been revised to specifically include inherited IRA accounts and 529 Plans.

What might this mean for Ohio residents?

The AMMA obviously provides much better asset protection planning for anybody who lives or works in Ohio. Gov. John Kasich approved it because he thought it would encourage business activity and professionals would be more likely to maintain their assets in Ohio. ●