TEXAS DYNASTY TRUST

I. INTRODUCTION: TEXAS DYNASTY TRUST

The State of Texas has flexible and powerful trust laws that allows individuals to establish both revocable and irrevocable trust. In the case of the irrevocable trust the law also allows for the establishment of a Dynasty Trust. The Dynasty Trust is a very effective tool for avoiding the estate/inheritance tax, asset protection and succession planning.

The Texas Trust Code allows trusts formed in Texas to exist for a maximum duration of 300 years. This is formalized in Texas Trust Code Section 112.036. This allows individuals and families who wish to form trusts in the state of Texas to use what are known as Dynasty Trusts, or trusts that continue for generation after generation, if that is how a client wishes to structure his or her estate affairs.

II. DEFINITION OF A TRUST

A trust is a legal arrangement in the United States where a grantor (the person creating the trust) gives legal title to property of the grantor to a trustee for the benefit of someone (the beneficiary). A trust maybe revocable or irrevocable.

The trustee has primary responsibility to manage and administer the trust, but investment committee and/or advisors can be appointed to direct the trustee.

In addition, a relatively new figure in the trust world known as the Protector can be appointed with many powers as explained below.

III. TAXATION OF A TRUST

In general, the taxation of a trust is complicated and requires careful analysis of the type of trust and the tax residency of the trust. If the trust is revocable it is treated as disregarded for US tax purposes and the income flows to the grantor. If the trust is irrevocable the trust it is treated as a separate tax entity and is taxed on its income. In addition the “tax residency” of the trust must be determined and it is separate from its legal residency (domicile). The tax residency depends on the residency of the individual or court that has control over the substantial decisions of the trust. Thus, a Texas trust controlled by a foreign person is deemed to be a foreign trust for US tax purposes and is taxed only on its US source income.

IV. SPECIAL ASSET PROTECTION FEATURES

A trust can help protect the assets of the trust from creditors and/or contingencies of the beneficiaries through the use of a special provision in the trust document known as the '*Spendthrift Clause*'. Trusts with spendthrift clauses prevent creditors from reaching the assets of the trust. However, a grantor cannot place his assets into a trust and also have the benefit of a spendthrift clause. Thus, a carefully prepared trust can protect the assets from liabilities, contingencies and even taxes if the proper trust agreement is prepared by a qualified attorney.

V. TRUST PROTECTOR

Another important role in modern trusts are trust protectors. Trust protectors essentially provide oversight to the trustee and act as a safeguard against trustee mismanagement of trust assets. In addition the Trust Protector may be given special powers that make him/her a very powerful person in the trust structure, such as, the ability to remove and replace the Trustee, changes and modifications to the trusts, and income distribution decisions. Trust protectors can also provide a way for beneficiaries to receive distributions of assets from the trust.

VI. CONCLUSION

The Texas trust is a very powerful tool for tax planning and asset protection. If you desire to have more information on the trust law or trusts themselves, or if you desire to make changes to your estate planning situation, feel free to call our office and schedule an appointment.

Should you need additional information it will be our pleasure to assist you. Do not hesitate to contact us if you have any questions.

Please note that this alert is not meant to give legal advice or counsel, you should consult your attorney about your specific situation.

Sincerely,

Ruben Flores, Attorney & CPA
The Flores Group