FABASA

"The only man who sticks closer to you in adversity than a friend is a creditor." -

Unknown.

CAN YOU TRUST REALLY PROTECT YOU AGAINST CREDITORS?

Phia van der Spuy: WE GUIDE YOU

FAMILY BUSINESS TIPS

The number one wealth preservation rule is to protect your assets

If you have sizeable investments and/or other assets in your family trust, then you might want to pay attention. One of the most important reasons to consider a trust is because it will help you to separate your assets from your property investment debt, your business interests, and/or your other financial risks.

Assets owned by a trust do not form part of the insolvent's estate, and, therefore, cannot be attached by their creditors. Section 12 of the Trust Property Control Act states that: "Trust property shall not form part of the personal estate of the trustee except in so far as he as trust beneficiary is entitled to the trust property."

BEWARE!

Once income, capital gains and/or assets are vested in a beneficiary, this protection is lost, as it then falls within their estate. Not even a trust instrument provision can permit the 'reversal' of such a vesting to retain protection.

Be mindful of quickly creating a trust to move assets away from your estate amid looming sequestration. There may be issues that arise in respect of the test to determine whether the trust has a lawful object.

It has been found that a trust that is aimed at frustrating either the founder's creditors (Executor Testamentary Estate Boulton case of 1958) or the beneficiary's creditors (Ruskin v Sapire case of 1966), where an enforceable right to the trust assets has already vested before its creation, will not be valid.

A trust found not to have a lawful object will be void or voidable in terms of our law. Where the assets were transferred to the trust while the estate planner was solvent, it would, however, be difficult for creditors to set aside the trust's actions.

How assets are transferred is relevant when it comes to the extent of their protection. For example, if you transfer an asset on a loan account, the amount of such loan account will remain an asset in your estate until the trust fully repays the loan. The implication is that the loan will not be protected from creditors. The loan is considered to be an asset in your own hands, and it can be attached.

The complete article can be read at:

http://trusteeze.co.za/article/how-to-protect-your-assets