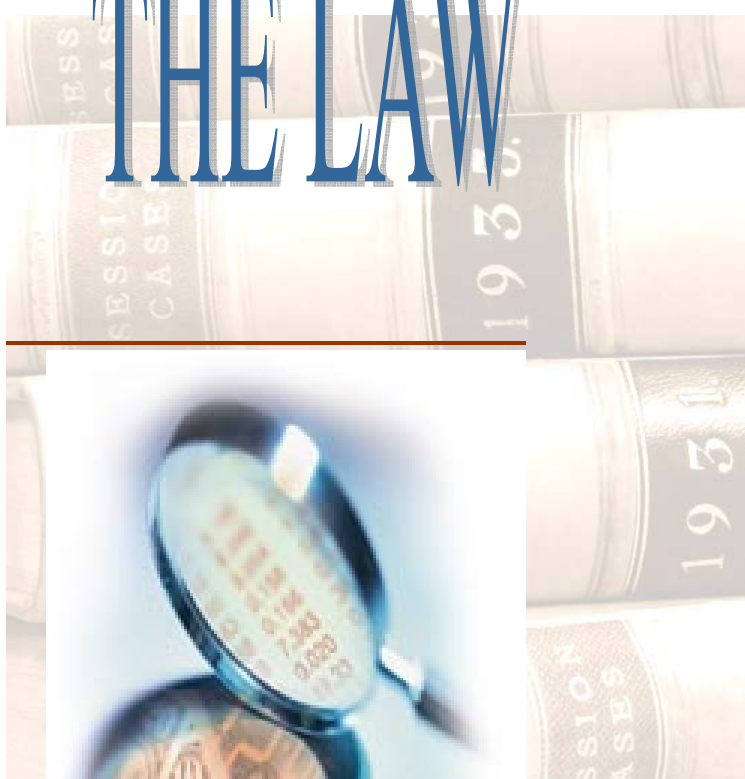


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A Closer Look at

THE LAW



E-Newsletter
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Disclaimer: This newsletter is for general information only and covers only broad legal concepts. In no way was the newsletter intended as formal legal advice. If you have further questions regarding a legal matter, please consult a licensed attorney.

Uncovering the “Secrets” of Michigan’s No-Fault Auto Law

When are you entitled to receive benefits for your injuries?

By [Jim Bidol](#)

Imagine you're injured in a motor vehicle accident. You can't work because of your injuries, and consequently you have no income. But fortunately there is something called a Michigan No-Fault Auto Policy that covers you in this situation.

Can you receive any lost employment income benefits from your auto insurer?

It depends. If you were employed at the time of the accident, then the answer is probably yes. If the answer is yes, then you're entitled to receive work loss benefits during the time you are unable to work. Of course you must submit a timely and proper claim, along with supporting proof. Section 3107(I)(b) of the No-Fault Act provides for such benefits to compensate an injured person for the employment income which would have been received if the accident had not occurred. Such benefits equal 85% of your current income, subject to changes, and are completely free of income taxes.

Do you get work loss benefits if you were unemployed at the time of the accident?

The answer is usually no, but there are exceptions. If you fit into the category of "temporarily unemployed" within the meaning of the Act, you are entitled to benefits. However, the Act does not define these terms. Michigan Courts have determined that a "temporarily unemployed person" must be able to prove that they would have returned to specific



work if the accident injury had not occurred. The courts have further ruled that a mere intention to work, or look for work, is not sufficient to qualify for benefits.

Here are two examples of situations in which an individual would likely qualify for “temporarily unemployed” status:

- 1) An individual is between jobs and has accepted an offer to work but it unable to start because of the injuries suffered in the accident.
- 2) At the time of the accident, the individual has been temporarily “laid off,” and they would have returned to work if not for the injury.

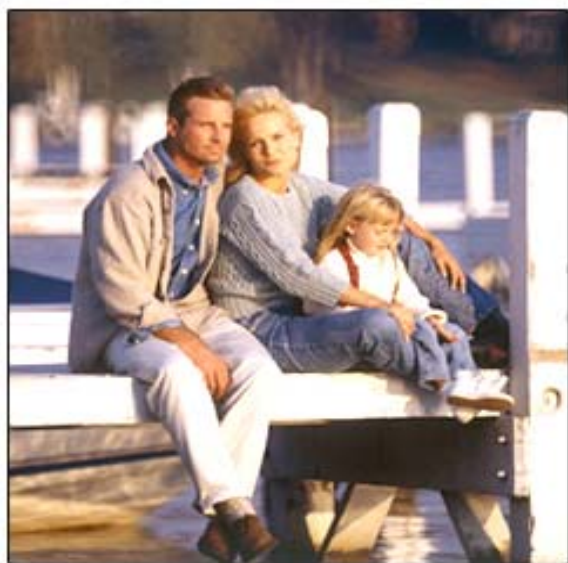
By no means is this intended to be a complete list of potential scenarios but hopefully it gives you an idea of when you can collect work-loss benefits from the Michigan No-Fault Auto Policy.

Dynasty Trusts

Practical Non-Tax Uses

By [Jeff Helder](#)

For years, very wealthy people have used Dynasty trusts to benefit multiple generations while keeping the inheritance out of several intervening generations' taxable estates. These trusts are (1) estate tax protected, (2) creditor protected, (3) divorce protected and (4) allow the grantor to control who ultimately inherits the property upon the child's death, even though the descendants of the grantor enjoy considerable benefits and control over the assets. More recently, because of the prevalence of divorce and litigation in our society, even people with more modest estates have appreciated the advantages of the Dynasty trust.



Basically, the trust is designed so that upon the grantor's death, instead of an outright transfer of the inheritance to the grantor's children, each child receives their share of the estate in trust. Frequently, the child is the sole trustee, (or if the child is young, or incapable of prudent financial management, the trust may have an independent trustee or the child may be a

co-trustee) and has the ability to remove and replace any co-trustee and select a successor co-trustee. The child is also given the power to add a co-trustee at any time.

The trust may be quite liberal in providing benefits to the child and the child's descendants. It is not unusual to provide that the trustee may distribute income and principal of the trust for the health, support, education, best interests and welfare of the child and the child's descendants. Upon the child's death, the principal of the trust is divided into equal shares, one for each then living child of the beneficiary, and one for any deceased child, who has living children. Each person for whom a share is created is called the primary beneficiary of the trust. Each share is then continued in trust as before, for the benefit of the primary beneficiary and his or her descendants. This process can continue in Michigan for ninety years from the grantor's death, at which time the trust must terminate.

Best Interest and Welfare

When a trustee is permitted to distribute principal from a trust for his or her own best interest and welfare, there is very little that the trustee would not be permitted to do with the money of the trust. For this reason, such a provision is both an advantage to the child, who is the trustee and beneficiary of the trust, and at the same time a detriment. The advantage is obvious. The child can get virtually anything out of the trust that they desire. In addition, with such a broad power, the child is less likely to inadvertently violate his or her fiduciary responsibility to future beneficiaries, by violating the terms under which distributions may be made out of the trust.

The detriment of such a power is less obvious. When a trustee/beneficiary has such a power, as sole trustee, the assets of the trust will be included in the trustee/beneficiary's taxable estate.

Thus, careful consideration must be given to the likelihood that a child or later descendant may have a taxable estate. Obviously, no one can know for sure whether a descendant's estate would be taxable. For this reason, the trust should include a provision that allows the beneficiary to appoint an independent co-trustee, or to resign and appoint a successor trustee.

Creditor Protection

When a person receives their inheritance in the form of a trust, the assets in the trust can be protected from the claims of that person's creditors. This type of provision is called a "spendthrift clause", and is a standard provision in most trusts. Since your child never owns the assets directly, his or her creditors will not be able to get access to the assets in the trust to satisfy any claim they may have against your child.

Marital Property

First-time married couples and soon-to-be married couples often do not have a marital agreement in place. Frequently, when a married person inherits from his or her parents, the assets are invested in the joint names of the married couple. When this is done, the assets become marital property. As such, the property is subjected to the rules of property division in the event of divorce.

On the other hand, when a married person receives their inheritance in the form of a Dynasty Trust, they may not remove the property from the trust and reinvest in the joint name with their spouse without violating the terms of the trust. In fact, they may not remove the property from the trust for any reason, OTHER THAN TO SPEND IT. The trust allows broad discretion to meet the beneficiaries' needs for health, support, education, best interests and welfare, but not to simply take the money out to invest it in their own name. The

trustee must not distribute money unless it is being spent. Because of the restriction on how the money may be used, it is much less likely to be considered a marital asset, and therefore less likely to be divided by a divorce court between your child and your child's ex-spouse.

Controlling Future Inheritances

One of the features of a Dynasty trust which is attractive to the grantors is the ability to preserve the inheritance for the benefit of the descendants of the grantors. When the child dies, the trust controls the distribution of the remaining principal and it must go to the descendants of the grantor, or the Primary beneficiary. However, it is common to give the child an option to direct the distribution of trust at the child's death among a limited group of beneficiaries. This power is called a special power of appointment, and is typically limited to the descendants of the child. Such a power adds flexibility to the trust, by allowing the child to make judgments on the most beneficial distribution plan based upon future circumstances, which may have changed substantially from the point in time when the grantor was adopting the trust.

Conclusion

A Dynasty trust can protect the inheritance you leave to your children from their creditors, divorcing spouses and estate taxes even though the child controls the trust as trustee. There are numerous ways to use such a trust to add benefits to your child's inheritance.

Roth 401 (K) Deferrals Begins in 2006

By [Judi Manning](#) and [Jeff Helder](#)

You can now save money another way in conjunction with your 401(K) profit sharing plan if your employer adopts a Roth 401(k) deferral amendment to its existing plan. This amendment is required prior to the end of the plan year after January 1, 2006.

A standard 401(k) deferral is considered a deferral before taxes causing your taxable income to be reduced. When the 401(K) deferrals are distributed, federal income taxes are required on the distribution.

In contrast, deferrals employee participants make to a Roth 401(K) are with after-tax dollars, but the distributions may be tax free. For Roth funds to be distributed tax-free, they must remain in the plan for at least five (5) years from the date the first funds are contributed. Funds withdrawn prior to five (5) years become taxable and subject to penalty. Withdrawals from the Roth 401(K) funds must also begin after the participant reaches age 59½, dies or becomes disabled.

A participant's maximum combined pre-tax 401(K) deferral and Roth 401(K) deferral may not exceed \$15,000 in 2006 and the 402(g) limit in effect for each calendar year thereafter. A participant that is over 50 years may make an additional catch-up deferral of up to \$5,000. Employers cannot contribute any money to the Roth 401(K).

Unlike traditional Roth IRA's, there are no income limitations restricting who may make Roth 401(K) contributions.

Records for the deferrals and earnings for the 401(K) Roth 401(K) must be kept separate.

The Roth contribution is also available on 403(b) plans.

The Roth 401(K) option was authorized as part of the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) to be implemented in plan years after December 31, 2005. Currently the Roth 401(K) deferrals are available through December 31, 2010 before disappearing unless extended by legislative action.