EXPERT CONTRIBUTOR

# Asset Protection Planning: REMOVING RISK FROM YOUR REWARDS

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**ASSET PROTECTION PLANNING,** which involves restricting your access to property, may be an appropriate estate planning element for individuals at risk, given the nature of their work or business. Those with general concerns about tort or contract claims may also be interested in such planning. It is important to understand all implications involved and how asset protection planning can be an integrated into your overall estate plan.

Asset protection planning is a long-term solution to shield assets from creditors, which substantially alters property rights. A correctly designed asset protection plan can help minimize economic exposure. Individuals generally interested in this planning are professionals (such as doctors, accountants and lawyers) or business owners, as their services are open to risk from unsatisfied or harmed customers and creditors. It is important to note that asset protection is not "hiding" assets, defrauding creditors, money laundering or tax evasion.

Before incorporating asset protection planning into your estate plan, several factors must be balanced. First, the techniques generally involve shifting ownership of assets to benefit others, which results in loss of control over and access to the assets. Second, you need to determine which risk(s) you are most concerned about, as the appropriate techniques will vary. Third, tax consequences of the particular technique(s) must be analyzed. And fourth, there cannot be actual or constructive intent to hinder, delay or defraud a creditor.

One of the common techniques to shield risk in connection with an asset is to create a business entity. Each entity type affords varying levels of protection. For example, a C corporation protects the business from a shareholder's personal liabilities and the shareholder is only responsible for business liabilities up to the amount of the shareholder's investment. Conversely, a sole proprietorship provides no protection. Not only is the sole proprietor personally liable to business creditors, but the business is also vulnerable to personal creditors. A limited liability company shields the business from a member's personal liability and the members from the business' liabilities. The facts and circumstances surrounding the asset and potential risk will determine which entity type makes sense.

Another technique is to transfer assets to an irrevocable trust, generally for the benefit of your family and not you. Correctly drafted trusts provide several protections. However, once an asset is distributed out of the trust, such protections no longer apply and the beneficiary's creditors (as opposed to your creditors) may have access to the distributed asset.

As an alternative option, some states permit domestic asset protection trusts (DAPTs) that provide creditor protection for self-settled trusts, meaning you are the beneficiary of the trust. Typically, individuals or trust companies located in the DAPT state must act as trustee. The protections to you, as the trust creator, are like those provided to other beneficiaries. States vary on the requirements and protections available to DAPTs, so consult with an experienced planner to ensure the DAPT is properly drafted. Wisconsin does not currently permit DAPTs and other states may or may not recognize the DAPT protections.

*If you have any questions about the strategies discussed above, or asset protection planning in general, please contact a member of Reinhart's Trusts and Estates Team for additional information.*