Asset Protection: Don’t Forget the Basics

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A KEY ESTATE PLANNING GUIDE

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Why Asset Protection

- Everyone needs to think about asset protection. We all can face lawsuits and other risks.
- Too often people and even advisers focus on the complex foreign or domestic asset protection trusts. That may be valuable, but it misses a few critical points.
- First, most people ignore asset protection planning until it is too late. By the time you need it, it may be too late to do it. You face risks transferring assets when you already know of or should know of a claim. Why not start yesterday?
- Second, one of the reasons many people delay asset protection planning is that they don't realize that there may be many often inexpensive or no-cost and simple steps that can be taken to protect assets.
- Lots of small logical steps supported by other planning objectives, might accomplish meaningful asset protection goals.

Small Steps You Might Consider Now

- Put together a balance sheet, financial plan and have searches done to confirm you are solvent and so you can demonstrate no current claims or issues.
- Title to assets – who owns what?
- Business assets (e.g., a rental property or widget manufacturing operation) are in entity names, not your personal name.
- Max out on retirement plans. Funding retirement plans is something everyone should do. If done pursuant to a logical financial plan that will help support that your transfers are being done for financial not asset protection reasons.
- 529 plans to fund the maximum education payments for descendants not only accomplishes important personal goals but may provide a measure of protection to the assets transferred.

Small Steps You Might Consider Now

- Life insurance to protect family and loved ones held in an irrevocable trust. Have your financial or insurance adviser evaluate whether permanent coverage which builds cash value in a trust makes sense. While meeting insurance and financial goals, that too may protect wealth transferred from future claims.
- Trusts that are being created (and you might be able to decant and modify old trusts) should not have mandatory distributions requirements (unless required for tax reasons, such as a QTIP trust). Best to have fully discretionary distributions decided upon by an independent trustee.
- The best trustee may be an unrelated, independent, institutional trustee. They will better administer trusts and it is difficult to argue that you have an implied agreement with an institution to make distributions or other transactions.
- Property, casualty and liability insurance should all be reviewed.

Additional information

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