# The Wealth Advisor

## An Introduction to Asset Protection Planning

Volume 6, Issue 1

**From Michael Wittick**

**Law Offices of Michael J. Wittick, a Professional Law Corporation**

7700 Irvine Center Drive, Suite 800
Irvine CA 92618
949-753-2829

My practice is exclusively devoted to estate planning, trust and probate law, in which I am certified as a specialist by the State Bar of California, Board of Legal Specialization. This newsletter highlights legal issues which could affect you personally and financially.

Almost everyone knows someone who had a problem and lost everything. Claims can, for example, allege professional liability, responsibility for a car accident, or unpaid creditors. Whether meritorious or not, defense can be enormously costly. With our litigious society, with limited risk for those making liability claims, asset protection planning has become required for many and highly desirable for many more.

In this issue of *The Wealth Advisor*, we will provide an introduction to asset protection planning (what it is, types of risk, when to plan, what to expect in the planning process, and levels of planning) and how you can get started.

**What is Asset Protection Planning?**
Asset protection planning is not about hiding or concealing assets. It is about using the existing laws appropriately to obtain the best possible level of protection for your assets – in other words, to make you a less desirable target for claimants.

**Types of Risk**
***Professional Liability***
Physicians, dentists, other health care professionals, lawyers, accountants, and sometimes people whose business enterprises pertain to health care, such as skilled nursing facilities and assisted living facilities, are frequent targets for claims. Those in construction (architects, builders, developers) also have professional liability concerns.

As a general rule, nobody can limit their own professional liability through a legal device. That's why professionals carry malpractice insurance. But there are other areas of risk against which professionals can and should protect themselves.

***Professional and Personal Liabilities of a Partner***
In a general partnership, each partner is liable for all claims arising out of partnership activities. Verbal partnerships are always general partnerships. Only in a limited partnership can the partners be protected from liability for the malpractice of the other partners. In a multi-owner entity in which an owner is married, protection may also be needed against a partner's next spouse becoming an owner.

***Non-Professional Personal Liabilities***
These include liabilities for business deals (for example real estate) that have gone bad and tort claims (such as for car wrecks). In any business there could be non-professional liability claims based on employment practices, alleged employment discrimination, and alleged sexual harassment, to name just a few.

***Other General Liabilities***
Professionals and nonprofessionals alike are exposed to general liabilities that can cause their assets to be at risk. These include liability for unpaid income and estate taxes; the behavior of children and their spouses, which can lead to loss of family assets; co-signing a loan or mortgage with a relative or another who defaults or has a judgment filed against them; or a car wreck or other accident.

**When to Plan**
The best time to plan is before a claim arises. There are different rules that apply for known claimants and unknown future claimants. But even with an existing claim, and sometimes even after a judgment has been entered, some options may still be available. It is, however, vital to avoid making a "fraudulent" transfer; i.e., a transfer of assets with intent to defraud or hinder creditors that is made without full and adequate consideration.

**The Planning Process and What to Expect**
Because asset protection planning can include a variety of strategies, it is usually best accomplished by a team of advisors, which may include a CPA, estate planning attorney, financial advisor, insurance advisor and possibly retirement plan administrator. Any member of this advisor team may recognize that you need asset protection planning and recommend an evaluation, or you may have some concerns that you would like to address. Generally, the process takes at least three meetings to plan and implement. They are:

*1. An Initial Meeting:* During the first meeting, the advisors will gather basic financial information, determine your objectives and begin to establish a relationship with you. They will also set some reasonable expectations for how asset protection planning works, including how the laws work and what you can expect.

It is important that you are honest and forthright in providing the information requested. At the same time, because the very nature of asset protection planning can involve current worry about potential risk and/or litigation, it is important to determine early how much information you are willing to share and *should* share with various members of your advisory team. For example, it may be vital to preserve attorney/client privilege and not share litigious information with non-attorney advisors who could be subpoenaed later.

*2. An Advisors Meeting:* After the initial meeting, the advisor team will usually meet without you to review your objectives, discuss various legal and financial solutions and determine a consensus solution.

*3. A Solution Meeting:* Here the advisor team will present a unified solution plan, including all legal and financial components, to you. Because many of us are living into our 90s, your plan should be flexible enough to accommodate changes over 20 or more years.

***Have Reasonable Expectations***

* Many people would like to have a *high degree of certainty* of the outcome of asset protection planning, but there may be circumstances that neither your advisors nor you can effectively control. Even so, the end result should be considerably better than if you had done no planning at all.
* Many people want to *maintain control* rather than shift assets to some unknown third party in a foreign land. The preferred approach is to maintain control or at least oversight of your assets.
* You want to have a plan that will *discourage lawsuits from the outset*. Your advisors cannot make your assets appear not to exist, but they can create a structure that will make it much less attractive for a potential plaintiff to go after you than after someone who has done no planning.
* You want to *avoid liability traps* of owning assets in general partnerships or in joint ownership where the assets are at risk to problems another owner may have.

***Funding the Plan***

Once the plan has been approved, your advisors will make a list of the assets and determine where they need to go. It can easily take six months to a year to fully fund the plan, and it’s usually done in steps and pieces. During this time, it’s important that everyone stays informed about the process.

**Levels of Asset Protection Strategies**

There are numerous asset protection strategies you can employ, from very basic to advanced, depending upon the particular risks you face, your current situation, and the extent to which you are willing and able to go to protect your assets. Briefly, asset protection begins with utilizing state and federal law exemptions for things like life insurance, retirement plans, and limited types of jointly owned property. These exemptions have limited effectiveness, however, because they only protect these specific types of assets. For those who need broader protections, more advanced strategies like business entities and even trusts specifically designed to protect you against future creditors may be in order.

***Planning Tip:*** Asset protection planning is a complex area, and as you start to become familiar with these tools, you will begin to understand why a team of advisors is usually needed to accomplish your goals.

**Conclusion**

If you are concerned about protecting your assets, talk to us. We can help you evaluate your situation, put together a team of advisors and start putting a plan into place. Most asset protection plans will build right on top of your existing estate planning.

Remember, the best time to plan is *before* a claim arises.

**TEST YOUR KNOWLEDGE ABOUT ASSET PROTECTION PLANNING**

1. Most asset protection plans hide your assets so creditors cannot find them. T F

2. Health care professionals do not have to worry about asset protection. T F

3. The best time to plan is after a claim has been filed against you. T F

4. Most asset protection plans can be created in just one meeting. T F

5. Asset protection planning will absolutely protect all of your assets. T F

6. Attorney/client privilege extends to all members of your planning team. T F

7. Funding the plan can usually be completed in less than a month. T F

8. State and federal law exemptions have limited effectiveness because they only protect specific types of assets, such as life insurance and retirement plans. T F

9. Creating business entities can be a viable means to protect your assets. T F

10. Asset protection planning can’t hide your assets, but it can make your assets less attractive for a potential plaintiff to go after you. T F

Answers: All of the above are false except 8, 9 and 10.

*To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax adviser based on the taxpayer's particular circumstances.*



Law Offices of Michael J. Wittick, a Professional Law Corporation 7700 Irvine Center Drive, Suite 800 Irvine CA 92618