

Asset Protection for Physicians and other Medical Professionals

Professional liability claims can exceed liability coverage or cannot be covered by liability insurance at all in some cases. Therefore, it is sensible to prepare an estate and a financial plan that anticipates the possible need to shelter assets from catastrophic loss, to promote prompt settlement of claims and to still allow for reasonable access and flexibility in the use and management of assets that are protected.

On the one hand, certain protections are available without complicated legal techniques. For example, state homestead and life insurance policy protections. Before advanced techniques are used, these fundamentals should be taken advantage of and utilized in every client's situation, without exception.

IRREVOCABLE TRUSTS

An irrevocable trust in the jurisdictions we are familiar with can be very effective to protect assets against claims *provided that* the physician or other professional is willing to give up access to principal. This is a big concession, and therefore the irrevocable trust is useful only for the right circumstances, including for wealthy individuals who can afford to part with the ownership of the assets (which may also be useful when done correctly, for estate tax savings and for shifting income to lower bracket beneficiaries) and income shifting purposes) and when "partial interests" are created, such as splitting ownership in a vacation home or within a business entity.

FAMILY LIMITED LIABILITY COMPANY

The FLLC provides a business purpose for the holding of investments, thus creating an entity whose assets are no longer personal to the physician and that cannot be easily removed from under the protective umbrella of the LLC to satisfy personal obligations. Business purposes include the investing and growing of assets, learning of financial management and planning, designating future uses of the assets for the benefit of shareholders, intergenerational succession of ownership and management and the like. What the FLLC can never be used for is ordinary living expenses of the physician and his immediate family. Therefore, it goes without saying that the business purpose must be *bona fide*.

If the physician's assets includes a rental vacation property, business property or other assets each of which could have liability of its own, then the client would be advised to establish separate LLC entities to hold these properties, so as to isolate the assets that may be vulnerable to claims, and to keep them out of the hands of the physician's hypothetical personal creditors.

THE DOMESTIC ASST PROTECTION TRUST

The Domestic Asset Protection Trust ("DAPT") is set up in a jurisdiction that allows "self-settled" trust for the holding of assets, providing a discretionary payment of trust assets back

to the creator of the trust. The jurisdictions most noteworthy for their support of the DAPT include Delaware, Nevada, Alaska and a handful of others. The Domestic Asset Protection Trust will be suitable for those clients who are truly serious about protecting assets without having to maintain strict adherence to the business purposes required under a FLLC. A DAPT can be useful at times of major liquidation events, prior to entering a second marriage, and at other times when protection may be important.

The DAPT must be established with the services of a trustee that resides in, or does business in, the jurisdiction. Most commercial and investment banks have trust companies in the state of Delaware that are set up just for the purpose of accommodating DAPT clients. Often the client's current investment advisory firm, broker/dealer or trust company will serve as a trustee for investors, for a fee. The cost of this service is in proportion to the assets and, it is fair to say, more cost effective when working the client's existing investment advisor to whom fees are being paid already.

STEPP™ PRACTICE AUDITS

We offer a program we call STEPP™, or Special Tax and Estate Protection and Planning Review, an audit of the medical practice corporate structure, who or what entity is the employer of the staff, who or what owns the physical offices and equipment, vulnerable receivables, missed opportunities for tax leverage or deferred income especially in the retirement and life insurance area, the making of referrals for review or production of employee manuals, plus a personal estate protection and planning review for each professional in the group. The objective is to provide planning and protection improvements that can be made at the practice level while supporting individual group members in updating their estate and personal protection plans.

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