

Asset Protection Planning

- 1. Goal of Asset Protection Planning** — The goal of asset protection planning is to change a creditor's economic analysis. In order to properly understand asset protection, one must analyze timing, the creditor, and the specific assets under consideration.
- 2. Not About Hiding Assets** — Asset protection is not about hiding assets. It doesn't work. Private investigators may find the assets. They will be found out in a debtor examination. Perjuring oneself is not a viable option.
- 3. Concepts** — The first concept of asset protection is that creditors can only go after assets that you actually own. The strategy is to remove title of the asset from the client's name, but still allow them to have control and enjoyment of those assets. The way we do this is through limited liability companies and through trusts. With respect to certain limited liability companies, there is no remedy to attach a membership interest. In certain states, the only thing a creditor can obtain is a charging order. The creditor cannot force a distribution. Thus, it makes it difficult for the creditor to get to the asset. This makes settlement much more favorable to the debtor.

The second concept is certain assets are exempt from creditors' claims depending on state law. For example, Texas, Kansas, Florida, and Nevada have desirable homestead protection. Also in States like Florida, annuities and cash value of life insurance are protected by statute and court decision.

The third concept is to make assets less desirable. An example of this would be placing liens on real estate. For example, one could create a home equity line of credit from a family member and secure it with a deed of trust.

- 4. Better To Do Something** — It is generally better to do something rather than do nothing. If you do nothing, it is almost certain that you will lose the asset. If you do something, you have a much better chance of keeping all or part of the assets.
- 5. Fraudulent Transfers** — One must carefully consider whether a court will view a transfer as a fraudulent conveyance to defraud creditors.
- 6. Estate Planning and Financial Planning** — Asset protection is frequently and best done as part of and in the context of an overall estate plan and financial plan.

To arrange a complimentary consultation, please call:

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