Asset Protection for Physicians and their Practices: The Doctor Is In - - - But Where Is The Tax and Estate Planning? (Part 1 & Part 2)

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Asset Protection for Physicians and their Practices: The Doctor Is In - - - But Where Is The Tax and Estate Planning? (Part 1 & Part 2)

A LawEasy Webinar Presented by:

Marty Shenkman & Alan Gassman

Friday, February 14, 2020
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Important Needs For The Successful Physician Family

1. Need to save money for retirement.
    1. Need to have income exceeding expenses.
    2. Need to invest wisely and control costs.
    3. Need to have a goal and realistic expectations and follow-through.
2. Need to have sufficient life insurance and the right kind.
3. Need to have sufficient malpractice and liability insurances.
4. Need to have assets owned in a way that they are immune from creditors.
5. Need to have medical practice coordinated to protect practice assets from creditors.
6. Need to have properly drafted trust and estate planning documentation.
7. Need to protect inheritances.
8. Need to make time to do the above.
9. Need to enjoy professional career.
10. Need to get along well with a significant other, if applicable.
11. Need to have a good CPA.
12. Need to have a good lawyer.

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Introduction To The Rest Of Your Life

MAKING THE MOST OF YOUR INITIAL OPPORTUNITIES

1. You can have a fantastic future. We can talk about that, but also about making sure that you do not make critical errors that would bring your financial future into devastation.
2. The time value of money and savings are amazing things. Start saving as soon as you can. Put your net worth high on the list of scorecards for the sake of mental security, family welfare and future enjoyment.
3. Over time banks will loan you more money than you can repay, and are only concerned about whether you can repay them, and not whether you will then have enough money left over to send your children to college and retire comfortably. Banks make money on interest they charge, not relationships.
4. Do not spend too much money on a house, or the expenses that come with it. Timeshares, vacation homes, and great real estate deals are all things not to rely upon. The appreciation in value may not compensate you for real estate taxes, insurances, maintenance, utilities, and travel expenses to enjoy a property that you may get tired of.
5. Numbers do not lie, but some of the people who use them do, and others are completely misled by their own industries. Be careful. Not everyone is working in your best interests.
6. Use a team of advisors who are independent of each other, who sincerely care about you, and who will debate honestly in order to educate you. Keep the bad apples out of your picnic basket of advisors.
7. Protect your assets from Creditors, and not just malpractice creditors. Car driving, building ownership and signing notes with banks can also be treacherous.
8. Understand how the corporate laws work to limit your liability, and possibly have charging order protection.

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h. Noise and distraction from the above:
   I. Here lies John Smith - He died with nothing and left his family destitute, but had great toys along the way– sorry family.
   II. Gambling addiction coupled with ego stroking can enable entrepreneurs to use doctor money to build companies that can fail miserably.
   III. Investing in real estate beyond your home, your office building, and medical related business that you know can pay rent becomes risky.
   IV. Loans to family means gifts to family, and it works that way with friends and pseudo-friends. Who are you really helping?
   V. Divorce can wreck your financial world. A bad relationship can wreck your personal world. If your spouse is not your best friend something is wrong.
   VI. On the other hand, your children are not your friends. Your job is to make them self-reliant, hard working, confident, but appreciative and self-supporting adults. If you fail, then you will have dependents for life, which is very expensive both from a psychological and financial standpoint.

i. Good news: There are simple steps to personal success. For example, not much has changed since Benjamin Franklin wrote his autobiography. If you have not read the biography of Benjamin Franklin by Walter Isaacson, start this week. It covers just about everything mentioned in this outline.

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9. Use trusts as an appropriate estate planning mechanism, and on rare occasion as an asset protection mechanism. Most estate plans for doctors are not done correctly. Use a well qualified lawyer for this that is not financially linked to an investment sales organization or arrangement. The goal should be to help you and not sell new products. This includes family members.
10. Cultivate, maintain, and improve on annual and quarterly balanced life goals:
    a. Your health comes first. This goal will not detract from any others.
    b. The health and well being of your loved ones comes second. This includes mental health for you and others.
    c. Your career comes third, but that will be the brightest and loudest stimulus for most of your waking hours. If you do not love it, change it or change how you look at it.
    d. Saving for retirement comes next. It should be automatic and therefore effortless. If not then see a financial and/or other counselor. If that doesn't work, see a psychiatrist, at least socially!
    e. Leisure time that enhances Sections a through d comes next. Time to think is important-hunting, fishing, running, boating, and other activities that give you the opportunity to think and take you away from the storm of our hurried existence can have a tremendous benefit.
    f. Mix in religion, politics, social status and other things as you like, but don't be taken advantage of by yourself or others in the name of any cause that detracts from a through d.
    g. How many of your actions and decisions are ego-driven? "Give John Smith, M.D. a title and he'll do anything." Don't let others manipulate you in the name of your ego.

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Do You Own Your Practice, or Does Your Practice Own You?

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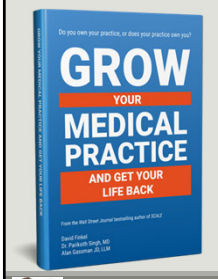

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The Process

Gathering & Organizing Information:	Work with the Right Advisors:	Educate & Design:
1. Assets 2. Titling 3. Entity documents 4. Agreements	1. Qualified 2. Independent Fiduciaries 3. Checks & Balances	One size does not fit all… Even 5 or 10 sizes never fit all.
Further customize for your unique situation.	1. Draft 2. Review 3. Implement	Maintain, Update and Modify as Appropriate

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TEAM OF ADVISORS

Have qualified advisors that includes a good accountant, lawyers of the specialties you need who are honest enough to tell you who you need and when you need them, a good personality and casualty carrier, and a competent, caring and ethical financial planner.

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Why You Need a Good CPA?

1. Avoid being "sold improper or expensive investments.
2. Avoid paying more than necessary taxes.
3. Avoid making bad financial decisions.

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PRIMARY CAUSES OF LIABILITY

Catastrophes in the Making

1. Debt: General creditors, medical creditors, guarantees, provider agreements, etc.
2. Tort Liability (civil breaches of contract, rather than criminal):

(a) Auto owners and drivers (boats and other vehicles)

(b) Errors and omissions - professional malpractice.

(c) Aiding and abetting others who commit wrongdoings.

(d) Premises liability- building owners. Think of that child on the tricycle going up the wheelchair ramp and flipping down the stairs. Also consider the following:

(i) Hazardous waste.

(ii) Asbestos and other harmful building materials.

(iii) People hurt by construction defects.

(iv) People tripping and hurting themselves in the parking lot.

(v) Tenants with rowdy customers who shoot people.

(vi) Inappropriate acts by lease management.

(vii) Children eating lead paint.

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PRIMARY CAUSES OF LIABILITY

3. Relationship Liability:

(a) Joint and several liability.

(b) Partnerships.

(c) Co-signors or co-guarantors on notes.

(d) Joint tort feasors (those who commit civil faults) can be jointly and severally liable for economic damages.

(e) Co-conspirators.

(f) Vicarious liability: An employer is generally liable for the activities of employees in the scope of the business. What if the receptionist runs over a child while running an errand?

(g) Spoiled romances and accusations by a forlorn ex-girlfriend or boyfriend, especially if you employed him or her.

4. Tax Liabilities:

(a) Income taxes.

(b) Trust fund - employee withholding – money stolen that should have gone to the government - paying employees as independent contractors.

(c) Penalties, interest, and criminal implications.

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PRIMARY CAUSES OF LIABILITY

5. Others:

(a) Divorce: Alimony and property settlement.

(b) Child support.

(c) Hazardous waste liability and related issues.

(d) Student loans.

(e) Business participation: Sexual discrimination, etc.

(f) Involvement as trustee with relationship to pension plans.

(g) Medicare and other payors.

(h) Real estate liability:

(i) Hazardous waste.

(ii) Lead paint.

(iii) Asbestos.

(iv) Tort liability.

(v) Vicarious liability for building activities.

(vi) Civil rights or other violations.

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Article Excerpt from Alan Gassman's Forbes Blog – December 5, 2018

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Your Biggest Financial Nightmare Is Parked In Your Driveway

Alan Gassman Contributor ⓘ
Retirement
I write about tax, estate and legal strategies and opportunities.

Auto Stands For Automatic Liability

Every year, thousands of Americans get killed or seriously harmed in motor vehicle accidents. For almost every accident, there is a family in peril and usually the owner and the driver of the vehicle will be blamed for the damages done.

If you drive a vehicle, own a vehicle for personal or business purposes or if you are the parent of a minor who drives, then you have significant liability exposure and Murphy's Law is bound to happen.

Here are some things that you can do to reduce your exposure to this unlimited liability.

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Especially Treacherous Liabilities

Liabilities generally not cancelable in bankruptcy include the following:		Liabilities generally not covered by insurance include the following:	
(i)	Government student loans	(i)	Civil rights violations committed by employees or others
(ii)	Trust fund tax liability	(ii)	Environmental liabilities, including sick building syndrome and lead paint issues
(iii)	Hazardous waste liability	(iii)	Criminal acts (can include "illegal" billing)
(iv)	Breach of fiduciary duty liabilities	(iv)	Charitable and religious board activities
(v)	Child support and alimony	(v)	Jet skis normally cannot be insured for over $250,000 per occurrence
(vi)	Medicare, Medicaid, and sometimes private pay refund liabilities of physicians: Carriers have been suing doctors for not following referral laws for significant refunds	(vi)	Acts of terrorism: Most casualty insurance clauses exempt acts of terrorism. The industry has been paying claims on goodwill up until now

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WATCH OUT FOR SUPER CREDITORS

- IRS
- Department of Justice – when pursuing under federal statutes that allow injunctions or expropriation.
- FTC
- SEC
  - The 2010 case of SEC v. Solow, 682 F. Supp.2d 1312 (S.D. Fla. 2010) permitted the SEC to enforce a Disgorgement Order despite the otherwise applicable Florida creditor exemptions.

Medicare – for when penalties and fines are due for improper billing or conduct

- Family Law Judges – but when homestead or tenancy-by-the-entireties is owned with next spouse – can it be invaded?

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WHAT WORKS AGAINST SUPERCREDITORS?

1. Charging order protection.
2. Trusts where state law does not allow creditor access and a Trustee is not required to make distributions to the debtor.
3. Foreign assets protected by foreign laws.
4. Assets not owned by the debtor.

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ASSET PROTECTION DEFINITIONS

To understand the subject of asset protection, you must speak the language. The following vocabulary and definitions will provide you with a basic understanding of the fundamental concepts which make up the "art and science" of Florida creditor protection planning.

Debtor - A party who owes money.

Creditor - A party who is owed money by the debtor.

Judgment - A court order establishing that a debtor owes money to a creditor. The existence of a judgment is almost always necessary before a creditor can seize a debtor's property.

Plaintiff - A party suing to get a judgment against a defendant.

Defendant - A party being sued by a plaintiff.

Exempt Assets - Assets that are protected from seizure under the creditor laws. A debtor will be able to keep these assets notwithstanding that a creditor may have a judgment against them.

Non-Exempt Assets - Assets of a debtor that are subject to creditor claims.

Fraudulent Transfer - As explained in Chapter 14, this is the name given to a transfer of assets from a creditor available status to a creditor non-available status if a primary purpose was to avoid known creditors. Under federal and state law, such transfers may be set aside if the assets are within the jurisdiction of an applicable court making such a finding. Outside of Bankruptcy Court, Florida has a statute of limitations on the ability of a creditor to set aside a fraudulent transfer, which in many cases runs 4 years after the applicable transfer. This does not apply under Florida law to a transfer of assets to homestead. Under bankruptcy law, however, a discharge of debt can be denied if there has been a fraudulent transfer made within one year of the bankruptcy filing. Also, the homestead exemption may be limited to $136,875, if there has been a "fraudulent transfer" to homestead within 10 years of filing bankruptcy. There is also a 10 year set aside rule for "fraudulent transfers to asset protection trusts and similar arrangements" under the 2005 Bankruptcy Act. Oftentimes, clients will be advised to make transfers in exchange for receiving full value to avoid the fraudulent transfer rules while still making the resulting arrangement more creditor protective than it would have been.

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Preferential Transfer - A transfer that may be set aside under state or bankruptcy law, such as a transfer made to any party within 90 days of filing a bankruptcy, or a transfer made to an "insider" within one year of filing the bankruptcy. See also Florida Statute §726 (providing a two year look back on transfers).

Charging Order - A creditor with a judgment cannot reach into a properly structured limited partnership or LLC arrangement, where the debtor does not own the entire entity. Instead, the creditor receives a "charging order" from the court, whereby if and when distributions are made from the entity, the pro rata share of the debtor would be paid to the creditor. There is nothing in the law that allows a court order that a distribution be made. Therefore, someone having a judgment against a debtor whose sole asset is a part ownership interest in a limited partnership or an LLC may have limited leverage to obtain cash or monies from the debtor, although the debtor will also have difficulty receiving distributions when a charging order is in place. This will often result in settlement, or the possibility of the creditor trying to force the debtor into bankruptcy.

Firewall Protection - The concept that the shareholder of a corporation or limited partner in a limited partnership will not be liable for liabilities incurred by the entity. This is why many companies put the more hazardous activities under a separate subsidiary.

Limited Liability Partnerships, Limited Partnerships, Limited Liability Limited Partnerships, Limited Liability Companies, Professional Limited Liability Companies, and Partnerships of the above Entities - The names given to various legal entities which have different effects as to firewall, tax, and charging order versus asset seizure protection. Be cautious as to which entity you choose because they do not all offer the same protection. For example, the creditor of a partner in a Florida limited liability partnership (LLP) can seize the partnership interests, and is not limited to receiving a charging order, but the creditor of a partner in a Florida limited partnership (LP) or a limited liability limited partnership (LLLP) will be limited to the charging order remedy. It is important not to confuse these entities, but this commonly occurs, even among well-meaning lawyers.

Staying Out of Bankruptcy - Many debtors will prefer to stay out of bankruptcy, so it is important for someone with an imminent judgment to understand how this can be achieved. Generally, it takes three creditors to force an individual into bankruptcy, if that individual has at least 12 creditors.

Bankruptcy - A federal process whereby every debtor has the right to file in the bankruptcy court, generally under Chapter 7, Chapter 11, or Chapter 13. Many lawyers say that this is like having the debtor "swim in a fish bowl" because there must be full disclosure of all documentation and information upon filing.

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Joint and Several Liability - The concept that individuals who participate in a negligent or improper act will be totally liable for all damages imposed to the extent that the other "co-defendants" do not pay their fair share. There are limitations on joint and several liability pursuant to Florida Statute Section 768.81.

Vicarious Liability- The concept that an employer is generally responsible for liabilities incurred by an employee acting within the scope of the employee's duties. The Greek term for this phenomenon is "respondeat superior."

Under this concept, parents may be responsible for the driving activities of their nannies or errand runners, and doctors may be responsible for unforeseen actions by employees who might aggressively try to help people using prescription scripts, giving medical advice, and/or driving automobiles.

Secured Interest - The concept whereby a creditor can record a mortgage or lien on assets whereby that creditor would be entitled to repossess the assets and sell them at auction to satisfy a debt owed to the creditor. Real estate is liened by the recording of a proper mortgage, and non-real estate assets may be liened by recording UCC-1 Financing Statements based upon appropriately drafted security and/or pledge agreements. If a friendly debtor has a secured interest in a particular asset, then another debtor would have to pay the friendly secured debtor before they would be able to seize the asset secured. This is why doctors will often give the bank with a mortgage on business real estate a lien against medical practice assets, so that a malpractice claimant would have to pay the bank off or take other steps before seizing medical practice assets.

Marshaling of Assets - Whereby a party having a lien against assets may be forced to sacrifice their position if there are plenty of other assets that it has access to, to satisfy the obligation of the debtor. Over-secured creditor issues may also arise.

Asset Protection Trust - A trust arrangement whereby creditors of the grantor may not have access – which is contrary to Florida and basic common law that if the grantor could receive any benefit whatsoever, then creditors may receive all assets.

Bad Faith - The malpractice insurance carrier has an obligation to settle any claim within the limits of coverage of the physician, if reasonably possible. The failure of an insurance carrier to settle within policy limits can result in the carrier being responsible for an "excess verdict." When this occurs, the plaintiff's lawyer will often settle with the defendant by receiving an assignment of the defendant's right to pursue the insurance carrier for the excess amount.

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ASSET PROTECTION DEFINITIONS

If the malpractice carrier believes it has a 90% chance winning at trial and a 10% chance of losing with a verdict well over policy limits, then it may make good economic sense for the carrier to take the chance, but not from the point of view of the physician. If the carrier takes the chance then if it has acted in bad faith it will be responsible for any excess verdict. Private legal counsel is commonly hired to encourage the carrier to settle within policy limits, and a physician should almost never encourage a carrier not to settle or be without private representation when the carrier or its lawyer recommends private representation! Fortunately, most verdicts exceeding coverage limits result in the physician assigning their bad faith claim to the plaintiff in exchange for a total release, particularly where the physician is otherwise judgment proof.

Automobile Liability – The owner of a motor vehicle in Florida is liable for operation of the vehicle by another driver, except that if the other driver has insurance then the owner's exposure may be limited to $300,000 per incident. If the driver has $500,000 of liability insurance, then the owner may not have liability exposure, unless the owner was negligent in allowing the driver to use the vehicle.

Sovereign Liability - The concept whereby an individual working for a governmental agency and the agency itself has limited liability, presently being $250,000 per incident. This applies to a physician working full time for public hospitals, medical schools, and the Veteran's Administration.

Successor Liability - When a corporation has a liability and a "successor corporation" has identical or similar ownership, identity, customers, employees and/or general identity, a judge may find the new company responsible for the liabilities of the old company, even if there was a legitimate bankruptcy of the old company before the new company was formed and operational.

Reverse Veil Piercing - When a court unwinds transfers made to entities where the transferor is a debtor that had control over the entity, and used the entity to disguise personal assets to keep them beyond the reach of personal creditors.

Concealment - Under the doctrine of concealment an asset "given away" but actually held for the original transferor will be considered as continually owned by the original transferor, notwithstanding title. Concealing assets puts the debtor at risk for losing a bankruptcy discharge.

How to Stop Worrying and Start Living- A book written by the late Dale Carnegie, which includes phenomenal advice on how to counsel for and live with concerns about what may happen in the future, what can be done about these potential future problems, and how to handle oneself and others in a logical, sequential, and effective manner.

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"It wasn't raining when Noah built the ark."

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Fraudulent Transfer Action Extinguishment Chart

	TERM	ITEMS	STATUTE LANGUAGE
1	The later of four years after the transfer is made or the obligation is incurred, or one year after the transfer or obligation was or could reasonably have been discovered by the claimant.	FS 726.105(1)(a) (The 1 year after transfer component will not apply in bankruptcy.)	Transfers fraudulent as to present and future creditors: (1) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation, (a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or… See: Biel Bank
2	Four years after the transfer was made or the obligation was incurred	FS 726.105(1)(b)	Transfers fraudulent as to present and future creditors – "The transfer was made or the obligation was incurred…" (1)(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor: 1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relations to the business transaction; or 2. Intended to incur, or believed or reasonably should have believed, that he or she would incur debts beyond his or her ability to pay as they became due.
3	One year after the transfer was made or the obligation was incurred	FS 726.106(2)	(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.
4	Four years after the transfer was made or the obligation was incurred	FS 222.30(5)	(5) A cause of action with respect to a fraudulent asset conversion is extinguished unless an action is brought within 4 years after the fraudulent asset conversion was made.
5	The later of four years after the transfer is made or the obligation is incurred, or one year after the transfer or obligation was or could reasonably have been discovered by the claimant.	FS 222.30(6)	(6) If an asset is converted and the converted asset is subsequently transferred to a third party, the provisions of chapter 726 apply to the transfer to the third party

Note: Conversion is defined at FS 222.30 as "every mode, direct or indirect, absolute or conditional, of changing or disposing of an asset, such that the products or proceeds of the asset become immune or exempt by law from claims of creditors of the debtor and the products or proceeds of the asset remain property of the debtor.

Note: 726.105(2) provides as follows:
(2) In determining actual intent under paragraph (1)(a), consideration may be given among other factors to whether:
(a) The transfer or obligation was to an insider.
(b) The debtor retained possession or control of the property transferred after the transfer.
(c) The transfer or obligation was disclosed or concealed.
(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.
(e) The transfer was of substantially all the debtor's assets.
(f) The debtor absconded.
(g) The debtor removed or concealed assets
(h) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.
(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.
(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.
(k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

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Understanding Your Liability Insurance Coverage

The vast majority of carriers will only issue a $250,000 policy on your home, a $250,000 policy on your driving, and a $250,000 policy on your vacation home. A separate "umbrella carrier" or "carriers" will then issue separate policies for above $250,000, as shown in the example below. Sometimes one carrier will write two or more of the below described policies, but often there will be 3 or more carriers involved and coordination can be a challenge:

$5,000,000 $251,000	Umbrella Policy #1 Covers claims for home at $300,000 and for cars at $250,000. Must be "drop-down" umbrella if home policy is issued by Citizens or a comparable state agency that does not cover liabilities from pools, pets, or other notable exceptions.		$5,000,000 $301,000	Umbrella Policy #2 May need a separate umbrella for out-of-state vacation home, large boats or other items.	
$250,000 $0	Policy #1 – Homeowners	Policy #2 – Vacation Home	$300,000 $0	Policy #3 – Car Driver and Owner Policy	Policy #4 - Big Boat at Vacation Home

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UMBRELLA INSURANCE COVERAGE

Re: UMBRELLA LIABILITY INSURANCE COVERAGE

Dear _____:

As part of our planning I wanted to reiterate the importance of having an appropriately coordinated and "gap free" liability and casualty insurance program.

I am enclosing a sample letter that some clients use to help assure that they have coverage for common gaps or mistakes made in structuring liability insurance. If you would like assistance in completing this type of letter, please let me know.

The rest of this letter is about umbrella liability insurance coverage. We believe that it is very important to have appropriate limits of liability on automobile and homeowner insurance policies. Typically, the automobile and homeowner policies will be at $500,000 coverage, and then there will be excess coverage under what is called a "personal umbrella policy."

The personal umbrella policy is used in combination with homeowners and auto policies to cover most clients' needs. If it is a true "umbrella" it will provide excess limits above and beyond your primary insurance coverage (such as homeowners, automobile or boat policy), and will also provide coverage for situations excluded or not addressed by underlying coverages. Each individual insurance company will have its own requirement for limits that you must have on your primary policies. You will want to be careful to assure that these policies are coordinated with your umbrella coverage.

Umbrella limits start at $1,000,000 and can go over $10,000,000. Pricing for these policies are based primarily on the number of houses and vehicles to be insured, with each additional $1,000,000 of coverage being less expensive than the preceding. In your situation I would probably have $_____ of umbrella liability insurance. Also, I would consider placing much of your brokerage account and other assets under a family limited partnership to further insulate you for creditor protection purposes.

Another coverage that is often underutilized by clients is called "uninsured motorist coverage." If you are in an automobile accident caused by someone who does not have enough coverage to pay for your damages, you can pursue your own insurance company to the extent of your "uninsured motorist" coverage. We encourage clients to see what it costs to have $500,000 or more in uninsured motorist coverage to help compensate for catastrophic accidents that can happen.

Some carriers, including citizens and carriers who have assumed policies from citizens do not provide liability coverage for pool and pet or animal related liabilities. In this event the Umbrella liability coverage may or may not apply. This is something that should be discussed with the insurance agency or carrier that provides liability coverage.

If we can provide you with any further information or with assistance concerning your insurances, please let us know.

Very truly yours,

Alan S. Gassman

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agassman@gassmanpa.com

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Dear Liability Insurance Agency and/or Carrier:

I recently met with my estate planning lawyer and wanted to make sure of the following:

1. Please confirm that we have Personal Liability Umbrella insurance covering our automobiles, boats, recreational vehicles, and all properties owned. I would like quotes on the following coverage limits, $1,000,000, $3,000,000 and $5,000,000, with and without Uninsured Motorist coverage.

2. Please confirm that we are covered for animal liability under our primary homeowners insurance and confirm that the Liability Umbrella would also extend to animal liability. We have been told that the primary homeowners may exclude animal liability and that some Liability Umbrella policies will not provide coverage when the primary homeowners insurance excludes same.

3. Please confirm that we are covered for pool related accidents occurring on our property and also confirm that the Personal Liability Umbrella policy will also extend coverage to pool related accidents.

4. Can you please confirm that we are covered for cars being driven by _____.

5. Can you please confirm that we are covered for the investment property that we own at _____. It is titled under the name of _____?

6. Can you please confirm that we are covered for our _____ boat, which is _____ foot long and is normally stored at _____. The horsepower is _____. Are we also covered for trailering the boat with our trailer?

Also, can you please confirm that we are covered for our waverunner/jet ski which is a _____ with horsepower of _____. It is stored at _____.

7. You do not handle the coverage for our vacation _____ in _____ or our vacation _____ in _____. Is our potential liability relating to the use of these properties covered under our umbrella, or do we have to obtain a separate umbrella for these properties?

Our _____ and _____ are stored and used up in our_____ _____.

8. _____ drives the car owned by _____ both for personal purposes and with respect to the _____ business. We assume our coverage includes business driving both by _____ and by _____ who occasionally drive the car for the business.

9. Can you please confirm that we are covered for our motorcycle being driven by _____.

10. Is there anything not mentioned above that comes to mind that we should be aware of?

Please send our lawyer, Alan S. Gassman, a copy of your response to this letter, which has been generated as a part of our estate planning. Alan's email address is AGassman@gassmanpa.com and his street address is 1245 Court Street, Suite 102, Clearwater, Florida 33746. His fax number is (727) 443-5825. Please send us a copy of your response as well.

If you have any further suggestions with respect to our coverages please let us know. Thank you very much for your assistance herewith.

Best personal regards,
CLIENT

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HAVE PLENTY OF INSURANCE COVERAGES

1. LIABILITY AND CASUALTY INSURANCES.
2. UNOWNED VEHICLE INSURANCE.
   *(NO MOTOR VEHICLES OWNED BY VALUABLE BUSINESS OR ASSET HOLDING ENTITIES.)
3. BUSINESS INTERRUPTION INSURANCE.
4. EMPLOYEE PRACTICES INSURANCE.
5. CYBER LEAKS AND PRIVACY INVASION COVERAGE.
6. PRODUCT LIABILITY INSURANCE

HAVE YOUR INSURANCE CARRIER COME AND SEE YOUR SITUATION FROM AN OSHA AND SAFETY POINT OF VIEW.

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THE A B Cs OF MALPRACTICE INSURANCE

Claims made policy – only covers liabilities for where a claim against the doctor has been made while the policy is active.

Tail coverage – a separate policy purchased or awarded after practicing or when switching from one carrier to the other so that all future "claims made" will be covered.

Tail term – permanent, four years, or two years.

Retroactive coverage – provided by a new carrier that will cover claims made in the future for past practice time – only available when replacing prior coverage.

Occurrence policy – unlike "claims made" – covers all claims made, even after policy is terminated, without having to buy a tail policy.

Respondeat Superior – an employer is responsible for the medical malpractice of its employee.

Rights of indemnity – an employee may have to repay an employer for liability incurred if the employer pays to settle the case and the employee was at fault.

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THE A B Cs OF MALPRACTICE INSURANCE

First year and stepped rates – it is far less likely that a lawsuit will be filed during the first year of a policy, and then somewhat more likely each consecutive year thereafter, so the rates rise annually until "mature" in the fourth or fifth year.

Corporate coverage – most policies are written for the individual doctor, but the corporation / employer can have a separate corporate policy that covers all doctors, practice extenders, etc. – usually relatively inexpensive and will increase overall coverage.

Defense only contracts – Gulf Atlantic in Jacksonville offers a $100,000 defense cost policy – the carrier will not pay anything for liability, but will provide legal representation and expert witnesses so that a plaintiff lawyer has little to hope for if the doctor and practice being sued are "judgment proof" (have no or little exposed assets).

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2018 Competitive Malpractice Insurance Rates With Normal Discounts

	$250,000/$750,000 Competitive Mature Rates 2018			$1M/$3M Competitive Mature Rates 2018		
	Remainder of Florida	Dade County	Broward County	Remainder of Florida	Dade County	Broward County
Internal Medicine N/S	$7,134	$15,909	$15,195	$12,051	$26,872	$25,667
Family Practice	$6,485	$14,462	$13,813	$10,955	$24,430	$23,334
Dermatology N/S	$3,973	$8,854	$8,354	$5,751	$14,806	$13,970
Cardiology Invasive	$8,198	$22,995	$21,980	$12,644	$38,843	$37,128
Cardiology Interventional	$11,155	$24,875	$23,759	$18,843	$42,019	$40,134
Gynecology Surgery	$11,891	$23,363	$17,545	$20,486	$43,184	$40,748

Compliments of:
Charles L. Wasson, III, CPCU
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Advantages and Disadvantages of Lowering Malpractice Insurance Limits

I. ADVANTAGES:

1. Reduction of premiums.

2. In a horrendous situation, a carrier is going to be more likely to simply give up policy limits than to defend a complicated case.

3. In a small number of instances where the liability may be great, but negligence is hard to prove, some plaintiff firms may not pursue a suit if there are fewer dollars available at the end of the rainbow. The better firms may reject such claims, and the "second or third tier plaintiff firms" will more likely settle for less or lose the suit.

4. As a matter of principle, this will leave less money for plaintiffs' lawyers and people who sue doctors to help stop feeding the industry.

5. From a public records and future evaluation standpoint, the prospect of being able to settle any claim at $250,000 instead of at a higher limit means that catastrophic claims will be characterized as having been $250,000 matters as opposed to $1,000,000 matters.

II. DISADVANTAGES:

1. If there is a serious claim, personal and practice assets will be exposed so that damages can exceed policy limits. IF A CLAIM VALUE EXCEEDS LIMITS OF LIABILITY, PERSONAL AND PRACTICE ASSETS MAY BE LOST, although this is generally unlikely if proper planning has been effectuated.

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Advantages and Disadvantages of Lowering Malpractice Insurance Limits

2. Having to go through defending a claim with the risk of losing personal or practice assets results in significantly higher emotional distress for the physician, their partners, and loved ones.

3. Maintaining high limits going forward means that the carrier would have to defend claims for future acts at the same high limits. Reducing limits now means that claims made in the past will only be subject to the now lower limits.

4. Potential employed physicians, banks, and managed care plans may be reluctant to work with a practice having lower limits.

5. In case of an actual error & an injured patient, having more coverage might be the right thing.

III. THE MIDDLE GROUND:

1. Many physicians have chosen small out-of-state or offshore carriers or "self-insurance" programs in lieu of traditional malpractice insurance.

2. These programs usually cost much less than traditional malpractice insurance, and offer the doctors "more control" over the claims process.

3. These carriers are not registered with Florida, and upon becoming insolvent the doctor has no protection at all.

4. These carriers are much more likely to become insolvent than Florida carriers.

5. In some cases, these carriers do not satisfy the definitional requirements of "malpractice insurance", so the doctor is actually "*bare*", but may not know to follow the going bare rules. A patient with a judgment against such a doctor may have the ability to cause the doctor to lose his or her discharge in bankruptcy and medical license!

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Advantages and Disadvantages of Lowering Malpractice Insurance Limits

- Other than malpractice insurance, there are several other important insurances that are easy (and affordable) to maintain:
  - disability insurance;
  - overhead insurance;
  - liability insurance (for non-malpractice obligations)
  - worker's compensation insurance
  - unowned automobile liability insurance
  - individual automobile liability policies
    - 3M – 5M in umbrella coverage recommended
  - Uninsured Motorist Coverage - if the person who hits you in an automobile accident doesn't have enough insurance, your own carrier can pay for your injuries and damages if you have sufficient uninsured motorist coverage

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Other Malpractice Exposure Reduction Strategies

1. Stop taking, or reduce the frequency of treating, patients who are in certain risk or payor situations.

Remember the Pareto principle - 80% of malpractice exposure comes from 20% of conditions / categories of patients treated.

2. Involve other providers who also have insurance coverage and can share in "the blame" if things do not go right. Some successful specialists always have nurse practitioners and physician assistants with separate limits involved with treatment.

3. Hospitalize the patient when appropriate. Hospitals have deep pockets.

4. Remember the 45 second rule - spend 45 seconds thinking about how you might get sued by this patient, and do what you an to avoid that.

5. You will live and die by your chart notes. Make them as accurate as possible, and try to have those you practice also keep good chart notes on your patients.

6. Avoid co-managing patients with doctors who do not do a good job or keep proper chart notes.

7. Require all or high risk patients to sign arbitration agreements if permitted by malpractice carrier and or insurance plans. Fire the patients who won't sign them.

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FLORIDA RESIDENTS- LEARNING HOW TO PROTECT YOUR ASSETS IN TWO MINUTES

CREDITOR EXEMPT ASSETS	ASSETS THAT ARE DIFFICULT FOR A CREDITOR TO OBTAIN	ASSETS EXPOSED TO CREDITORS
Homestead - *Up to half acre if within city limits.* - *May be immune from fraudulent transfer statute.*	Limited partnership and similar entity interests.	Individual money and brokerage accounts.
IRA - *Includes ROTH, Rollover, and Voluntary IRAs, but possibly not inherited IRAs.*	Foreign trusts and companies.	Joint assets where both spouses owe money.
401(k) - *Maximize these!*	Foreign bank accounts.	One-half of any joint assets not TBE where one spouse owes money.
Permanent Life Insurance - *Must be owned by insured.*	Note – foreign entities are very rarely recommended and must be reported to IRS -	Personal physical assets, including car, except for $4,000 exemption ($1,000 if homestead exemption is claimed in bankruptcy).
Annuity Contracts Wages of Head-of-Household Wage Accounts (for six months only) Tenancy by the Entireties (joint where only one spouse is obligated) - *Must be properly and specially titled – joint with right of survivorship may not qualify.* 529 College Savings Plans	**Vocabulary:** **EXEMPT ASSET** – An asset that a creditor cannot reach by reason of Florida law – protects Florida residents. **CHARGING ORDER PROTECTION** – The creditor of a partner in a limited partnership, limited liability limited partnership, or properly drafted LLC can only receive distributions as and when they would be paid to the partner. **FRAUDULENT TRANSFER** - Defined as a transfer made for the purpose of avoiding a creditor. Florida has a 4 year reach back statute on fraudulent transfers. A fraudulent transfer into the homestead may not be set aside unless the debtor is in bankruptcy. It takes 3 creditors of a debtor who has 12 or more creditors to force a bankruptcy. Upon filing a Chapter 7 Bankruptcy, an individual debtor may be able to cancel all debts owed and keep exempt assets, subject to certain exemptions. Annuities and life insurance policies are not always good investments, and can be subject to sales charges and administrative fees. There is a lot more to know- but this chart may be a good first step.	

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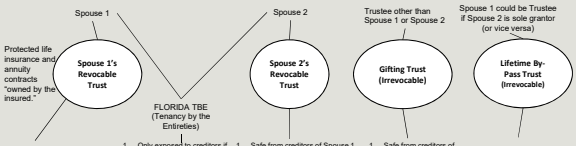
DETERMINING HOW TO BEST ALLOCATE ASSETS AS BETWEEN A MARRIED COUPLE - PART I

General Rules:
-Typically want each trust funded with at least $11,180,000 worth of assets on death for estate tax planning.
- May be funded from ½ of tenancy by the entireties assets via disclaimer and probate or by life insurance/pension/IRA assets.



1. Assets held directly by revocable trust are subject to Spouse 1's creditor claims.
2. Direct ownership of limited partnership or LLC not in TBE may have charging order protection **(meaning that if a creditor obtains a lien on the limited partnership or LLC, Spouse 1 cannot receive monies from the limited partnership or LLC without the creditor being paid).**

1. Only exposed to creditors if **both spouses owe the creditor, if one spouse dies and the surviving spouse has a creditor, the spouses divorce, or state law or the state of residence changes.**
2. On death of one spouse, surviving spouse may disclaim up to ½ (if no creditor is pursuing the **deceased** spouse) to fund By-Pass Trust on first death.

1. Safe from creditors of Spouse 1 but exposed to creditors of Spouse 2 (Maintain large umbrella liability insurance coverage to protect these assets.)
2. On Spouse 2's death, can be held **under a protective trust, which will** continue to be safe from creditors of Spouse 1, subsequent spouses, and "future new family."

1. Safe from creditors of both spouses.
2. If divorce occurs, should not be subject to rules for division of property between spouses.
3. May be controlled by the "entrepreneurial spouse" by using a Family Limited Partnership.

1. **Safe from the creditors of the Grantor's spouse.**
2. If funded by one spouse, may benefit other spouse and children during the lifetime of both spouses.
3. Otherwise can be identical to gifting trust pictured to the left.

SEE NEXT PAGE FOR SECOND TIER PLANNING
A COMMON SOLUTION - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.

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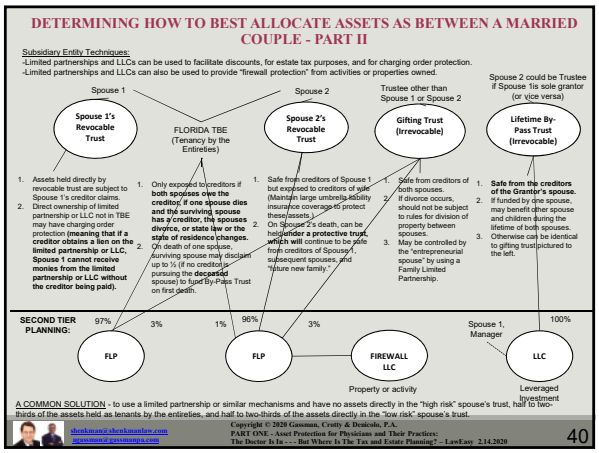
DETERMINING HOW TO BEST ALLOCATE ASSETS AS BETWEEN A MARRIED COUPLE - PART II
Subsidiary Entity Techniques:
-Limited partnerships and LLCs can be used to facilitate discounts, for estate tax purposes, and for charging order protection.
-Limited partnerships and LLCs can also be used to provide "firewall protection" from activities or properties owned.
Spouse 1
Spouse 2
Trustee other than Spouse 1 or Spouse 2
Spouse 2 could be Trustee if Spouse 1is sole grantor (or vice versa)
Spouse 1's Revocable Trust
FLORIDA TBE (Tenancy by the Entireties)
Spouse 2's Revocable Trust
Gifting Trust (Irrevocable)
Lifetime By-Pass Trust (Irrevocable)
1. Assets held directly by revocable trust are subject to Spouse 1's creditor claims.
2. Direct ownership of limited partnership or LLC not in TBE may have charging order protection (meaning that if a creditor obtains a lien on the limited partnership or LLC, Spouse 1 cannot receive monies from the limited partnership or LLC without the creditor being paid).
1. Only exposed to creditors if both spouses owe the creditor, if one spouse dies and the surviving spouse has a creditor, the spouses divorce, or state law or the state of residence changes.
2. On death of one spouse, surviving spouse may disclaim up to ½ (if no creditor is pursuing the deceased spouse) to fund By-Pass Trust on first death.
1. Safe from creditors of Spouse 1 but exposed to creditors of wife (Maintain large umbrella liability insurance coverage to protect these assets.)
2. On Spouse 2's death, can be held under a protective trust, which will continue to be safe from creditors of Spouse 1, subsequent spouses, and "future new family."
1. Safe from creditors of both spouses.
2. If divorce occurs, should not be subject to rules for division of property between spouses.
3. May be controlled by the "entrepreneurial spouse" by using a Family Limited Partnership.
1. Safe from the creditors of the Grantor's spouse.
2. If funded by one spouse, may benefit other spouse and children during the lifetime of both spouses.
3. Otherwise can be identical to gifting trust pictured to the left.
SECOND TIER PLANNING:
97%
3%
1%
96%
3%
Spouse 1, Manager
100%
FLP
FLP
FIREWALL LLC
LLC
Property or activity
Leveraged Investment
A COMMON SOLUTION - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.
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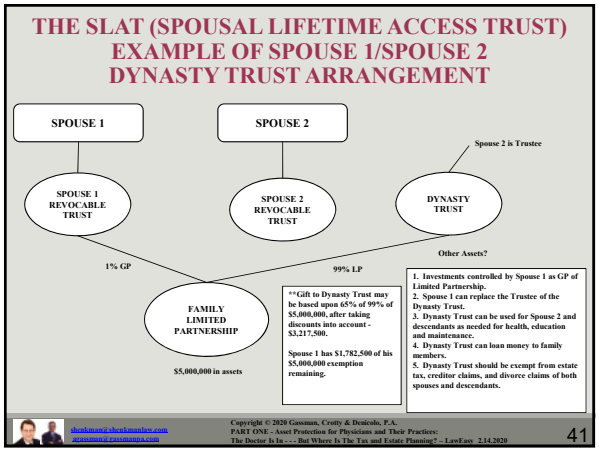
THE SLAT (SPOUSAL LIFETIME ACCESS TRUST)
EXAMPLE OF SPOUSE 1/SPOUSE 2
DYNASTY TRUST ARRANGEMENT
SPOUSE 1
SPOUSE 2
Spouse 2 is Trustee
SPOUSE 1 REVOCABLE TRUST
SPOUSE 2 REVOCABLE TRUST
DYNASTY TRUST
Other Assets?
1% GP
99% LP
FAMILY LIMITED PARTNERSHIP
$5,000,000 in assets
**Gift to Dynasty Trust may be based upon 65% of 99% of $5,000,000, after taking discounts into account - $3,217,500.
Spouse 1 has $1,782,500 of his $5,000,000 exemption remaining.
1. Investments controlled by Spouse 1 as GP of Limited Partnership.
2. Spouse 1 can replace the Trustee of the Dynasty Trust.
3. Dynasty Trust can be used for Spouse 2 and descendants as needed for health, education and maintenance.
4. Dynasty Trust can loan money to family members.
5. Dynasty Trust should be exempt from estate tax, creditor claims, and divorce claims of both spouses and descendants.
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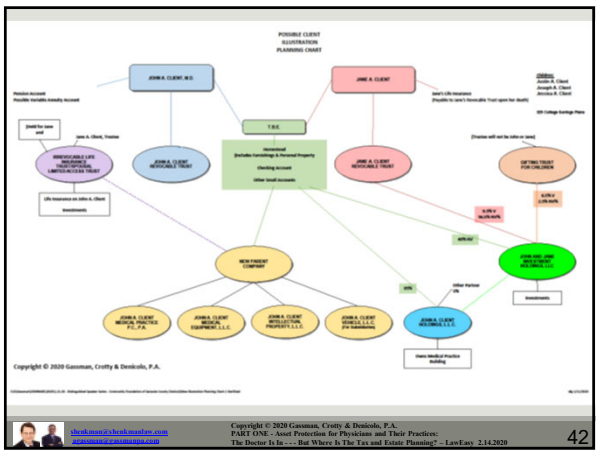
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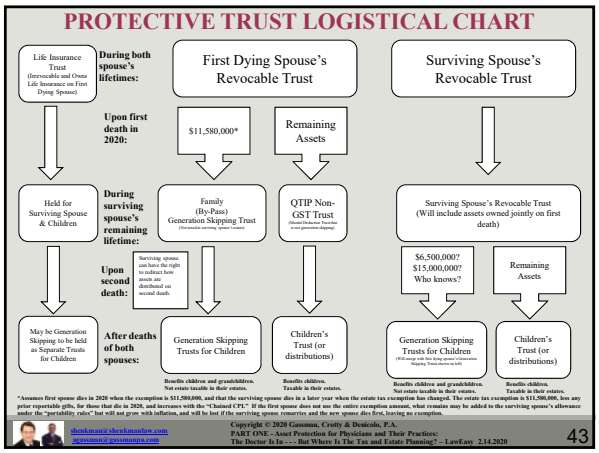
PROTECTIVE TRUST LOGISTICAL CHART
Life Insurance Trust (Irrevocable and Owns Life Insurance on First Dying Spouse)
During both spouse's lifetimes:
First Dying Spouse's Revocable Trust
Surviving Spouse's Revocable Trust
Upon first death in 2020:
$11,580,000*
Remaining Assets
Held for Surviving Spouse & Children
During surviving spouse's remaining lifetime:
Family (By-Pass) Generation Skipping Trust
QTIP Non-GST Trust
Surviving Spouse's Revocable Trust (Will include assets owned jointly on first death)
Upon second death:
Surviving spouse can have the right to redirect how assets are distributed on second death.
$6,500,000? $15,000,000? Who knows?
Remaining Assets
May be Generation Skipping to be held as Separate Trusts for Children
After deaths of both spouses:
Generation Skipping Trusts for Children
Children's Trust (or distributions)
Generation Skipping Trusts for Children
Children's Trust (or distributions)
Benefits children and grandchildren. Not estate taxable in their estates.
Benefits children. Taxable in their estates.
Benefits children and grandchildren. Not estate taxable in their estates.
Benefits children. Taxable in their estates.
*Assumes first spouse dies in 2020 when the exemption is $11,580,000, and that the surviving spouse dies in a later year when the estate tax exemption has changed. The estate tax exemption is $11,580,000, less any prior reportable gifts, for those that die in 2020, and increases with the "Chained CPI." If the first spouse does not use the entire exemption amount, what remains may be added to the surviving spouse's allowance under the "portability rules" but will not grow with inflation, and will be lost if the surviving spouse remarries and the new spouse dies first, leaving no exemption.
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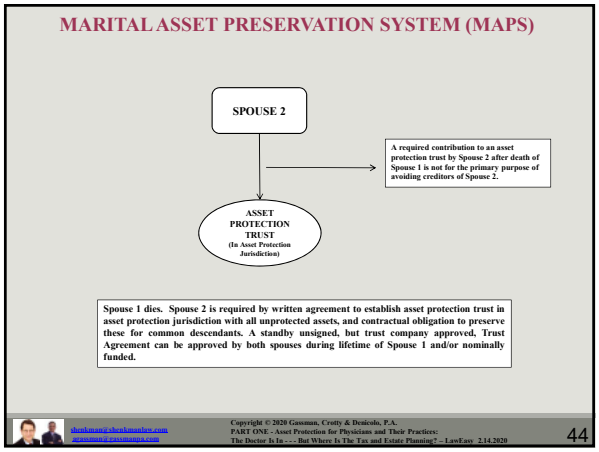
MARITAL ASSET PRESERVATION SYSTEM (MAPS)
SPOUSE 2
A required contribution to an asset protection trust by Spouse 2 after death of Spouse 1 is not for the primary purpose of avoiding creditors of Spouse 2.
ASSET PROTECTION TRUST (In Asset Protection Jurisdiction)
Spouse 1 dies. Spouse 2 is required by written agreement to establish asset protection trust in asset protection jurisdiction with all unprotected assets, and contractual obligation to preserve these for common descendants. A standby unsigned, but trust company approved, Trust Agreement can be approved by both spouses during lifetime of Spouse 1 and/or nominally funded.
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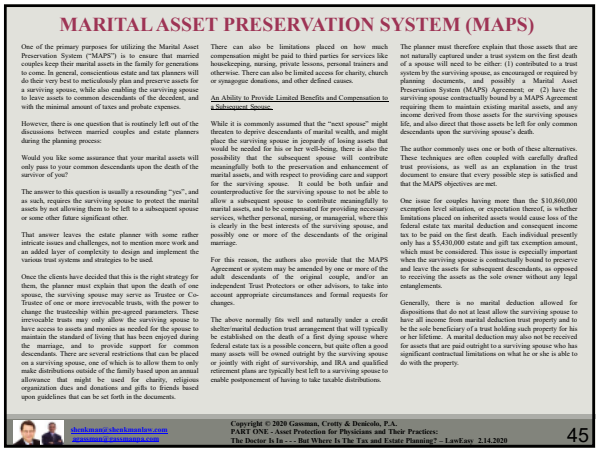
MARITAL ASSET PRESERVATION SYSTEM (MAPS)
One of the primary purposes for utilizing the Marital Asset Preservation System ("MAPS") is to ensure that married couples keep their marital assets in the family for generations to come. In general, conscientious estate and tax planners will do their very best to meticulously plan and preserve assets for a surviving spouse, while also enabling the surviving spouse to leave assets to common descendants of the decedent, and with the minimal amount of taxes and probate expenses.
However, there is one question that is routinely left out of the discussions between married couples and estate planners during the planning process:
Would you like some assurance that your marital assets will only pass to your common descendants upon the death of the survivor of you?
The answer to this question is usually a resounding "yes", and as such, requires the surviving spouse to protect the marital assets by not allowing them to be left to a subsequent spouse or some other future significant other.
That answer leaves the estate planner with some rather intricate issues and challenges, not to mention more work and an added layer of complexity to design and implement the various trust systems and strategies to be used.
Once the clients have decided that this is the right strategy for them, the planner must explain that upon the death of one spouse, the surviving spouse may serve as Trustee or Co-Trustee of one or more irrevocable trusts, with the power to change the trusteeship within pre-agreed parameters. These irrevocable trusts may only allow the surviving spouse to have access to assets and monies as needed for the spouse to maintain the standard of living that has been enjoyed during the marriage, and to provide support for common descendants. There are several restrictions that can be placed on a surviving spouse, one of which is to allow them to only make distributions outside of the family based upon an annual allowance that might be used for charity, religious organization dues and donations and gifts to friends based upon guidelines that can be set forth in the documents.
There can also be limitations placed on how much compensation might be paid to third parties for services like housekeeping, nursing, private lessons, personal trainers and otherwise. There can also be limited access for charity, church or synagogue donations, and other defined causes.
An Ability to Provide Limited Benefits and Compensation to a Subsequent Spouse.
While it is commonly assumed that the "next spouse" might threaten to deprive descendants of marital wealth, and might place the surviving spouse in jeopardy of losing assets that would be needed for his or her well-being, there is also the possibility that the subsequent spouse will contribute meaningfully both to the preservation and enhancement of marital assets, and with respect to providing care and support for the surviving spouse. It could be both unfair and counterproductive for the surviving spouse to not be able to allow a subsequent spouse to contribute meaningfully to marital assets, and to be compensated for providing necessary services, whether personal, nursing, or managerial, where this is clearly in the best interests of the surviving spouse, and possibly one or more of the descendants of the original marriage.
For this reason, the authors also provide that the MAPS Agreement or system may be amended by one or more of the adult descendants of the original couple, and/or an independent Trust Protectors or other advisors, to take into account appropriate circumstances and formal requests for changes.
The above normally fits well and naturally under a credit shelter/marital deduction trust arrangement that will typically be established on the death of a first dying spouse where federal estate tax is a possible concern, but quite often a good many assets will be owned outright by the surviving spouse or jointly with right of survivorship, and IRA and qualified retirement plans are typically best left to a surviving spouse to enable postponement of having to take taxable distributions.
The planner must therefore explain that those assets that are not naturally captured under a trust system on the first death of a spouse will need to be either: (1) contributed to a trust system by the surviving spouse, as encouraged or required by planning documents, and possibly a Marital Asset Preservation System (MAPS) Agreement; or (2) have the surviving spouse contractually bound by a MAPS Agreement requiring them to maintain existing marital assets, and any income derived from those assets for the surviving spouses life, and also direct that those assets be left for only common descendants upon the surviving spouse's death.
The author commonly uses one or both of these alternatives. These techniques are often coupled with carefully drafted trust provisions, as well as an explanation in the trust document to ensure that every possible step is satisfied and that the MAPS objectives are met.
One issue for couples having more than the $10,860,000 exemption level situation, or expectation thereof, is whether limitations placed on inherited assets would cause loss of the federal estate tax marital deduction and consequent income tax to be paid on the first death. Each individual presently only has a $5,430,000 estate and gift tax exemption amount, which must be considered. This issue is especially important when the surviving spouse is contractually bound to preserve and leave the assets for subsequent descendants, as opposed to receiving the assets as the sole owner without any legal entanglements.
Generally, there is no marital deduction allowed for dispositions that do not at least allow the surviving spouse to have all income from marital deduction trust property and to be the sole beneficiary of a trust holding such property for his or her lifetime. A marital deduction may also not be received for assets that are paid outright to a surviving spouse who has significant contractual limitations on what he or she is able to do with the property.
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MARITAL ASSET PRESERVATION SYSTEM (MAPS)

In states that do not recognize community property, most planners will use separate revocable trusts for affluent husbands and wives for estate planning, because of established customs and the complexities associated with using joint trusts. In such situations, it is possible to have the revocable trust of the surviving spouse become irrevocable upon the death of the first surviving spouse. For purposes of federal estate and gift taxes, this event will be considered an incomplete gift because it provides the surviving spouse with the right to veto payments to any person other than the surviving spouse during their remaining lifetime, and the power to appoint trust assets to common descendants of the married couple.

Alternatively, in states that do recognize community property, we find that joint trusts are becoming more prevalent.

An objective for many estate and tax planners, regardless of the state in which they live, is to have the first dying spouse's death cause a step-up in the income tax basis to a fair market value for any and all family assets. This strategy should be utilized to the extent that the family would benefit from having an increased basis, which would essentially take any property that appreciated during the decedent's lifetime and provide the surviving spouse with the ability to not recognize any gain on such property when they come into possession.

Many planners in non-community property states are using Joint Exempt Step-Up Trusts ("JEST"), which may enable clients to receive this stepped-up basis on all joint trust assets upon the death of the first dying spouse. When the first spouse dies, assets held by the joint trust are used to fund a credit shelter trust for the benefit of the surviving spouse and descendants. These assets now held by the credit shelter trust will receive a full step-up in basis, and escape tax liability upon the surviving spouse's death.

Life insurance can also be integrated into the arrangement by having the death benefit payable to an irrevocable trust, which may be a separate trust that owns the policy so as not to be subject to federal estate tax on the death of the first dying spouse.

Waiver of Marital Rights.

Most states have statutes which provide a surviving spouse with a minimal outright disposition, most commonly known as the Elective Share. In addition, some states provide a surviving spouse with homestead inheritance and other rights which may be waived during the estate planning process while both spouses are living.

The estate planner will have to be very careful with respect to disclosing conflict of interest issues and evaluating whether one or both spouses should be required, or at least strongly urged, to seek independent legal counsel before being legally bound to have limited access and control to marital and inherited assets after the death of one spouse. In the event that a conflict of interest does arise, the estate planner should withdraw and require the spouses to retain separate counsel. Furthermore, because the planner represented both spouses, they are prohibited from representing either one of them against the other, even with informed consent.

ABA-Model Rule 1.7 addresses the rules for Current Client Conflicts of Interest. In essence Rule 1.7(a)(1) states that, a lawyer shall not represent a client if representing one client will be directly adverse to another client. However, this Rule is not an absolute bar to representing a client when there is a conflict. Subsection (b) provides that a lawyer may represent a conflicted client if (1) they believe they can provide competent representation; (2) it is not prohibited by law; (3) it does not involve one client asserting a claim against another client, both of whom are represented by the lawyer; and (4) each client gives informed consent. In the context of marital inheritance, subsection (b)(3) will almost always bar the attorney from representing one client over another, even with informed consent.

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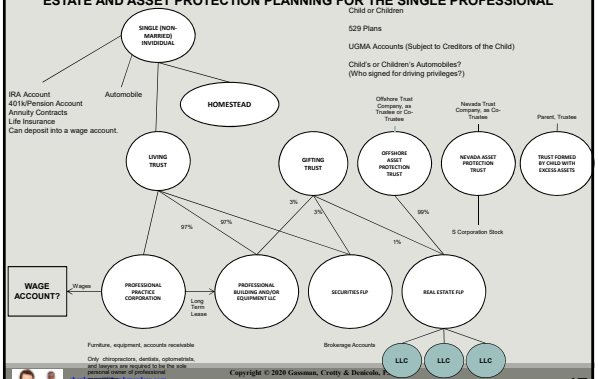
WHERE DO TRUSTS FIT IN LOGISTICALLY?

ESTATE AND ASSET PROTECTION PLANNING FOR THE SINGLE PROFESSIONAL



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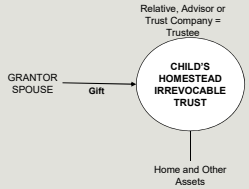
Child's Homestead Irrevocable Trust

- Can own a home used by a child to benefit the spouse and descendants
- Can qualify for the State Homestead Exemption and 3% cap
- Can be considered as owned by the Child for income tax purposes to qualify for the $250,000 income tax exemption on sale
- Can be controlled by the Trustee and used for the benefit of various family members
- Will insulate family members from liabilities associated with ownership of the home



Trust assets can be applied for the health, education, maintenance and support of the Trustee-Spouse and children.

One or more children may reside in the house to qualify for the Florida Tax Homestead Exemption.

For income tax purposes, the Trust can be considered as owned by the child who lives in the house so that the house can be sold income tax free to the extent of up to $250,000 in appreciation.

The Trust will not be subject to creditor claims of any family member unless (1) the transfer to the Trust by the Grantor Spouse is a "fraudulent transfer," or (2) the child has a right to withdraw more than the gift tax exclusion amount in any calendar year.

NOTE – The Trust must be appropriately drafted, funded, and administered to achieve the above results.

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DYNASTY WEALTH PROTECTION TRUST

Trustee

DYNASTY WEALTH PROTECTION TRUST

Assets gifted to trust and growth thereon.

Note: Nevada gets a gold star for having a law that says there cannot be an assumed or an oral agreement between the Grantor and the Trustee of a dynasty trust; because of this, the IRS cannot say that the grantor retains certain control.

Grantor can replace the Trustee at any time and for any reason.
Protected from creditors of Grantor and family members.
Can benefit spouse and descendants as needed for health, education and maintenance.
Per Private Letter Ruling 200944002 the Grantor may be a discretionary beneficiary of the trust and not have it subject to estate tax in his or her estate. But be very careful on this! The Trust would need to be formed in an asset protection jurisdiction and there is no Revenue Procedure on this.
Should be grandfathered from future legislative restrictions.
May loan money to Grantor.
May own limited partnership or LLC interests that are managed at arm's-length by the Grantor.
May be subject to income tax at its own bracket, or the Grantor may be subject to income tax on the income of the trust, allowing it to grow income-tax free unless or until desired otherwise. If the Grantor is a beneficiary it must remain a disregarded Grantor Trust.

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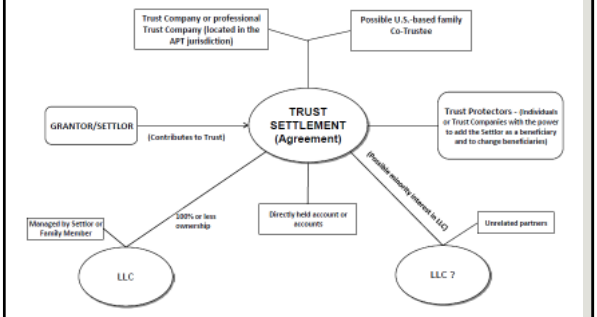
The Anatomy of a Typical Offshore or APT State Trust Arrangement



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THE ANATOMY OF AN ASSET PROTECTION TRUST

1. Trustee – The Trustee holds the trust assets for the benefit of the beneficiaries pursuant to the terms of the Trust Agreement.
2. Trust Settlement – This is the Trust Agreement, and should be drafted by competent legal counsel with an understanding of:
   a) The law of the jurisdiction
   b) United States tax law
   c) Trust and creditor protection law in general
3. Scheduled Beneficiaries – These are the initial named beneficiaries that the trust is established for. Reputable offshore trust companies will require passports, utility bills, professional letters of reference, and sometimes affidavits from each beneficiary when the trust is established.
4. Trust Protectors – These are individuals and/or trust companies who have certain powers over the trust:
   a) To change the Trustee or Trustees – commonly any replacement Trustee must be a reputable trust company or a lawyer practicing in an asset protection trust ("APT") jurisdiction.
   b) The power to add beneficiaries who are not "excluded persons."
5. Flee Clause a/k/a Cuba Clause – A provision that requires the Trustee to move the trust and trust assets to another jurisdiction in the event of a governmental change, or if a judicial challenge to the trust makes it possible that the trust assets would be invaded within a short period of time.
6. United States Judgment – A judgment from a United States Court, which means nothing whatsoever in the jurisdiction where the trust is situsd (located). In most reputable APT jurisdictions, the creditor will have to file a brand new lawsuit in the jurisdiction and obtain a new judgment against the debtor before then attempting to set aside the trust by proving that the trust is an alter ego of the settlor or a beneficiary, or that the transfer to the trust was for the primary purpose of avoiding creditors.

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THE ANATOMY OF AN ASSET PROTECTION TRUST

7. APT Legislation – Special laws passed in a number of offshore jurisdictions which make it extremely difficult, if not impossible, for a creditor to pierce an APT:
8. Contingency Fees Not Permitted – In most asset protection jurisdictions, lawyers must charge their clients by the hour, and not on a contingency fee basis.
   a) Belize has no statute of limitations – unless there is a judgment against the settlor in Belize on the day the trust is formed, Belize law will protect the trust.
   b) Court Registry deposit requirement – Nevis requires a 100,000 Nevis dollars ($37,037.04) deposit into the Court Registry before a trust can be challenged. A 100,000 Nevis dollars ($37,037.04) deposit is also required to challenge an LLC. A Nevis trust and LLC challenge will therefore require a 200,000 Nevis dollars ($74,074.07) deposit.
9. Conflict of Interest Considerations – Typically, there are between two to six dozen practicing lawyers in a popular asset protection trust jurisdiction. Most or all of these lawyers have done work for the more popular trust companies, and would therefore have a conflict of interest in pursuing a trust for a creditor – lawyers from outside of the country must therefore come in as "foreigners before the court" to be admitted to practice law there to challenge the trust.
10. Judicial Bias - The asset protection trust jurisdictions derive significant income and lawyer work, not too mention governmental fees that support the local economy. The last thing an asset protection trust jurisdiction economy needs would be a judicial decision that lets creditors into a well intended asset protection trust that was structured in advance.
11. Having Your Cake and Protecting it, Too - The Trustee of the APT can own a 99% limited partnership interest or the ownership of an LLC, with the entity being managed responsibly and transparently by the general partner or manager, which may be the settlor. If and when a challenge might occur, the settlor may transfer control of the subsidiary entity to the Trustee of the trust.

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DO DOMESTIC ASSET PROTECTION TRUSTS WORK?

- Nevada, Alaska, Delaware, South Dakota and other states have asset protection trust statutes. But the Full Faith and Credit Clause of the U.S. Constitution provides that a judgment issued by the court in one state will be respected by the court in other states.
- There are many questions regarding the effectiveness of domestic APTs. The case law is not yet fully developed on the question of whether the law of a foreign jurisdiction will apply for the determination of whether a creditor protection trust will shield trust assets from creditors of the grantor who is also a beneficiary.
  - *Hanson v. Denckla*, 357 U.S. 235 1958 – the law of the state where the trust administration occurs will be determinative.
  - *In re Portnoy*, 201 B.R. 685 (Bankr. S.D.N.Y. 1996) and *In re Brooks,* 217 B.R. 98 (Bankr. D. Conn. 1998) – assets placed in offshore APTs were not excluded from the debtor's Bankruptcy estates.
  - *Dahl v. Dahl*, 2015 UT 23, Supreme Court of the State of Utah (January 30, 2015) – Under Utah law, wife had an enforceable interest in a NV APT that husband created because the trust was revocable regardless of stating in the trust language that the trust is irrevocable. The language that the Court based its reversal upon stated that, "Settlor reserves any power whatsoever to alter or amend any of the terms or provisions hereon."
  - *In re Mortensen, Battley v. Mortensen*, (Adv. D.Alaska, No. A09-90036-DMD, May 26, 2011) – assets situated in Alaska were placed in an Alaska APT. The Court held that the exemptions would be determined under state law rather than federal law because the state law is applied to determine if the trust was established correctly.

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Have Your Parents Allow You To Inherit In Trust

Article Excerpt from Alan Gassman's Forbes Blog – December 17, 2018

873 views | Dec 17, 2018, 10:07 am

The Most Valuable Gift You Can Give: A Good Estate Plan

Alan Gassman Contributor
Retirement
I write about tax, estate and legal strategies and opportunities.

Make Sure Your Parents Have A Good Estate Plan Maximizing Your Inheritance While Safeguarding Your Parents' Assets

One of the challenges of being an estate planner is watching clients skimp on estate planning because this reduces the protection of what their descendants will receive by significant multiples, ultimately cheating themselves and their loved ones.

For example, spending an extra $500 to $700 to have a revocable trust instead of just a Will can save tens of thousands of dollars on probate, not to mention wasting needless time going through the courts, but this money is often not spent.

In addition, there are many planning opportunities under the estate tax, which for now only applies to individuals who have more than $11,180,000 worth of assets to pass down, assuming no reportable prior gifting occurred.

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THE INHERITANCE TRUST

Child is your client and would like for her inheritance from Mom and Dad to go into a trust for her health, education, and maintenance (and for her descendants). She can be the Trustee and have a limited power of appointment.

It will be protected from creditors, loss in divorce, and federal estate tax.

It may be difficult or impossible to have Mom and Dad properly amend their planning documents to facilitate this.

Why not have Child establish a free standing Inheritance Trust and then Mom and Dad can simply amend their will or trust to name the inheritance trust instead of Child as beneficiary.

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FEATURES OF THE INHERITANCE TRUST

1. Child can sign on behalf of parents and as nominal Grantor.
2. Child may want the right to amend the trust at any time before it is funded by parents.
3. Child can make distributions for her descendants, but what about for her spouse?
4. Allow Child to transfer situs to state that will not permit exception creditors (ex-spouses, child support, etc.) to reach into the trust.
5. Have overflow provision so that if funding would exceed Parent's available GST exemption a Non-GST Exempt Trust will be formed the Child can appoint to creditors of Child's estate from.
6. Independent Fiduciaries clause to allow bestowing a general power of appointment upon the child if estate tax is not a concern and capital gains tax will be.
7. Ability to deem capital gains out.

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CHARGING ORDER ENTITIES AND OTHER PORCUPINES

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CHARGING ORDER PROTECTION- WHAT IS A CHARGING ORDER?

Most states have laws providing that the creditor of a limited partner of a partnership may not seize any portion of the partner's ownership interest, if the limited partner individually has a creditor. Most states also have similar laws that are applicable to the membership interests of a member in a limited liability company.

The creditor may instead receive a Court Order (a "Charging Order"), which forces the partnership to make distributions that would normally be paid to the debtor limited partner to the creditor to the extent of the limited partner's indebtedness to the creditor. Again, this concept is also applicable to a member's membership interests in a limited liability company.

Typically, the Court will not have the authority to mandate if or when the limited partnership would make such distributions.

As stated above, a charging order prohibits a creditor from exercising any rights otherwise held by the debtor, such management, alienation and governance rights, but does permit the creditor to receive distributions that would normally go to the debtor limited partner.

Must have member who does not owe money to the creditor (a multiple member LLC) for protection to apply.

Florida provides that a Charging Order is the exclusive remedy for creditors of a debtor limited partner in a limited partnership or a debtor member in a limited liability company

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CHARGING ORDER: TRAPS FOR THE UNWARY

1. Not all states recognize charging order protection.
2. A court in the state of residency may apply the law of that state, and not the law of another U.S. or foreign jurisdiction to determine if charging order protection applies.
3. If the non-debtor member has at least one-half of the voting rights (voting stock or member interests), then a judgment creditor may not be able to seize control or force distributions from an LLC or corporation.
4. Charging order protection will not apply if the debtor is in bankruptcy and the Operating Agreement/arrangement is not an Executory Contract (where each member, including the "Trustee in Bankruptcy" or "Debtor in Possession" has affirmative duties).

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8 COMMON LLC PLANNING ERRORS

Limited Liability companies are quite often the entity of choice for investment and business holdings. Problems can arise, however, where structuring does not take important risks and federal and state law requirements into account. Some of the most common problems we encounter in reviewing LLC arrangements for clients are:

1.) Tenancy by the Entireties Designation that Will Not Qualify as TBE

Many married couples in states that protect tenancy by the entireties assets from the creditor of one spouse or the other have their LLC interests titled jointly as tenants by the entireties, but they don't realize that there are provisions in the operative documents which are inconsistent and would, thus, annul tenancy by the entireties characterization and protection. Common examples of this are:

(a) By the rules of tenancy by the entireties, the joint interest must pass outright solely by the surviving spouse in the event of the death of the surviving spouse. Oftentimes, an operational document will provide that, on the death of a member, the interest of that member must be sold. Agreements are commonly not drafted to explicitly provide that on the death of a spouse, the other spouse will be the owner of the joint interests, without any inconsistent member agreement provisions.

(b) Similarly, provisions under an operative document which restrict transfers may actually be read to prevent one spouse from owning the entire member interest on the death of another spouse.

(c) While the certificate of ownership may be issued to both spouses as tenants by the entireties, oftentimes, the Operating Agreements or Articles of Organization will provide for only one spouse or the other to be an owner.

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8 COMMON LLC PLANNING ERRORS

2.) Entity Documents Can Disqualify S Election

Limited liability companies may be treated as S Corporations under the federal income tax law if certain very strict requirements are met and an S election is made. If the S election is made but the S Corporation requirements are not met, then the company will be taxed as a "C Corporation," therefore exposing properties and income to double tax.

Common causes of this catastrophic treatment are as follows:

(a) An operating agreement does not provide for all income to be distributed pro rata to ownership. Commonly, "partnership style" clauses assure members that they will recapture their original investment or have some sort of an income sharing that would reflect a "second class of stock," which is not permitted under the S Corporation Rules.

(b) Although state law permits a limited liability company to have non-citizens, corporations, and other entities own LLC interests, these and certain other entities are not permitted owners of S Corporation stock and will, thus, cause disqualification.

(c) Too high of a debt equity ration could cause disqualification from S Corporation status.

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8 COMMON LLC PLANNING ERRORS

3.) Failure to Plan for Cash or Other Distributions/Failure to Use an Intermediary Entity

Oftentimes, a client will invest in a multiple member LLC, expecting to have charging order creditor protection, but not thinking through that positive cash flow that other members will want to assure is distributed will become accessible to a judgment creditor who has a charging order against the LLC. Many clients are well advised to establish a "Family Holding LLC" or a family limited partnership to hold the multiple member LLC interests so that positive cash flow would pass to the family LLC to be held and reinvested in a protected manner.

Clients who take ownerships in a multiple member LLC as tenants by the entireties may wish to do so under a limited liability company or limited partnership owned by the spouses and another family member in order to assure that upon the death of one spouse tenancy by the entireties status would continue, and positive cash flow from the multiple member LLC will, thus, be protected.

4.) Forced Sale Provisions

Often, well-drafted Operating Agreements will have provisions that would allow any member to force a sale of their member interests at any time or under certain circumstances, such as where another member is selling their interest ("tag along rights"). One advantage of a limited liability company under the laws of most states is that the sole remedy of a judgment creditor is a charging order – meaning that the credit cannot actually force the sale of the limited liability company interest, become a forced owner, or reach into the limited liability company. A bankruptcy or state court judge may override charging order protection where a debtor member would have the right to simply "cash out" at the time when the judgment creditor has a charging order against the debtor.

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8 COMMON LLC PLANNING ERRORS

5.) We "Formed it Ourselves" or "My Accountant Took Care of This."

While it is possible for any third grader to file a charter to establish the existence of an LLC with state authorities, in the author's experience, the vast majority of LLCs that have been established by non-lawyer personnel have been implemented incorrectly. In most states, it's the unauthorized practice of law for a non-lawyer to establish and implement a limited liability company for another party. Therefore, the types of non-legal firms that are willing to establish and implement limited liability companies tend to be unconcerned and ignorant, willfully or inadvertently, of the formalities, paperwork, and coordination needed to properly establish, document, implement, and operate a limited liability company. Clients who buy $99 "Total Service Incorporation Kits" run the same risks. The slogan "Pay us now or pay us later" comes to mind, but along with that comes "Pay us later and watch your assets looted by creditors and/or the Internal Revenue Service."

6.) Assuming that Limited Liability Companies are as Well Protected as Limited Partnerships in All States

Some states provide charging order protection for limited partnerships but not limited liability companies. Clients who have or will have children or other members residing in a state or jurisdiction that may not protect them may want to consider using limited partnerships or other entities in lieu of limited liability companies.

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8 COMMON LLC PLANNING ERRORS

7.) Failure to Properly Respect Formalities and the Existence of the LLC

It is generally very difficult to "break the corporate veil," but a debtor relying upon a limited liability company arrangement needs to be able to show that the company was the actual owner and operator of the property/business, that a charter was properly filed and maintained consistent with operational documents, accounting and tax treatment, and that the arrangement was not in reality a general partnership, a joint venture, or a proprietorship.

8.) Personal Activities May Not be Insulated by Use of an LLC

Some clients believe that they can carry on consulting, management, or related activities under the name of their LLC and not have potential personal liability.

Under general tort law, the officer of a company and the manager of an LLC will be responsible to third parties for personal negligence. Many clients are well advised to keep a low profile with respect to LLC activities and to hire third parties to handle management decision making and day-to-day activities.

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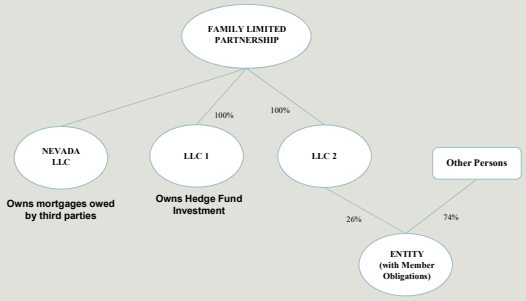
USING INTERMEDIARY ENTITIES TO PROTECT FAMILY LIMITED PARTNERSHIP FROM POTENTIAL LIABILITY



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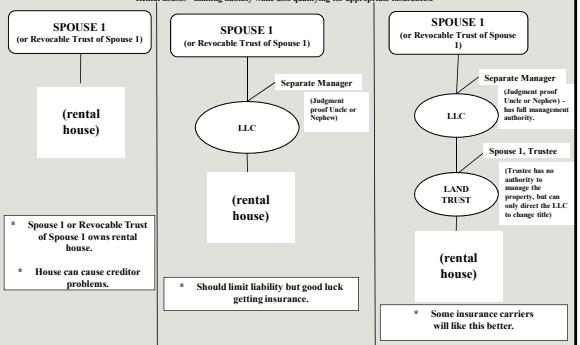
CONFIDENTIAL RENTAL HOUSE OWNERSHIP STRATEGIES

*Rental houses - limiting liability while also qualifying for appropriate insurances.



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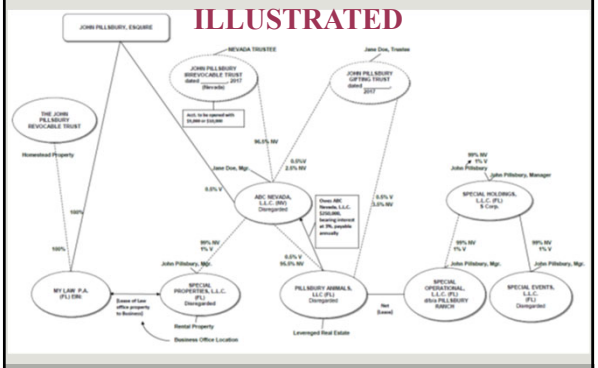
LEASES AND MASTER LEASES, ILLUSTRATED



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PARTNERSHIP V. S CORPORATION – WHICH IS BETTER TO HOLD REAL ESTATE?

PARTNERSHIP	S CORPORATION
Advantages 🙂	*and Disadvantages* ☹
Partners receive basis for indebtedness incurred by the partnership 🙂	DOI income insolvency exclusion is determined at the corporate level. 🙂
On the death of a partner, the partnership's (inside) tax basis of its assets can receive a step-up in income tax basis, if a Section 754 election is in place for the partnership 🙂	No similar basis adjustment mechanism applies to S corporations. ☹
When a new partner buys into a partnership corporation, their depreciation write-off and underlying basis in their partnership interest will be based upon the price that they pay. 🙂	When a new shareholder buys into an S corporation, their depreciation write-off and underlying basis if and when the real estate is ever sold has to be based upon the historic basis and depreciation taken, versus being based upon the price they pay. ☹
Appreciated real property can generally be distributed from the partnership tax-free to the partners. 🙂	Distributions of appreciated real property to the shareholders are treated as if the property was sold at its fair market value to the shareholders. ☹
No restrictions apply as to who can own partnership interests. 🙂	S corporations can only be owned by certain individuals and trusts, and cannot be owned non-resident aliens, corporations or partnerships ☹
Partnerships can have more than one class of stock, and income and distribution preferences can be drafted in virtually any manner, so long as they have substantial economic effect 🙂	S corporations cannot have a "second class of stock," and income allocation and distribution rights must be pro rata to ownership ☹
DOI income insolvency exclusion is determined at each partner's level.	Shareholders do not receive basis for indebtedness incurred by the corporate, unless the loan is made by such shareholder. ☹

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HOMESTEAD CREDITOR PROTECTION

In Florida, there is unlimited protection for homestead property and improvements thereon of up to a half-acre in the city or 160 acres in the county, provided the owner is an individual (or perhaps a revocable trust) who resides on the property and is a U.S. citizen or Green Card holder.

The person must be a permanent resident of Florida and intend to make the property his or her permanent residence.

Need not qualify for real estate homestead tax exemption to have the benefit of Constitutional creditor protection.

Florida homestead protection "trumps" fraudulent transfer statutes (*Havoco of America, Ltd. v. Hill)*

Beware of bankruptcy law limitations and the ten-year fraudulent transfer look-back period.

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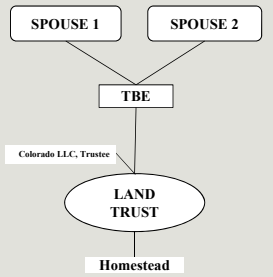
Homestead Confidentiality Arrangement



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Segregated Homestead Planning

- Creditors lost in the swamps.
- Excess Property
- Driveway Easement
- ½ Acre Waterfront Home

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Not Every Home Will Grow at an "Average Rate"

by Frank Catlett and Alan S. Gassman

Frank A. Catlett is a State-Certified General Real Estate Appraiser (FL), General Real Estate Appraiser (NC), and Certified General Real Property Appraiser (GA) with over 37 years of experience. Mr. Catlett is President of Trigg, Catlett & Associates, located in Tampa, Florida, which provides appraisal and brokerage services to not only the Tampa Bay, but most parts of Florida as well as North Carolina.

A great many senior Americans borrow money on "Reverse Mortgages" based in part on being told that their homes will go up in value with "national or regional averages," which is often not the case.

For many of these homeowners, the better decision would be to downsize and not try to hold onto more house than they can afford. The decision to stay in a house that is too large causes the loss of investment resources in return and increased expenses. One national study has indicated that the cost of maintaining a home is based upon 3.53% of its value. Having a $200,000 home, when only a $100,000 home is needed, may therefore cost the senior citizen not only the investment return on $100,000, but also an additional 3.53% or more per year in expenses for utilities, taxes, insurance, and maintenance.

The reverse mortgage industry has encouraged many seniors to stay in their "too large" homes, based in part upon showing them projections that will indicate a likelihood of a 4% per year increase in value.

In fact, a 2013 actuarial report prepared for the US Federal Housing Administration (FHA) has indicated that a "worst case scenario" bottom 25th percentile Monte Carlo simulation has predicted that home prices could go down by more than 20% between 2014 and 2018 and might not recover to 2018 levels until 2024.
While the "average home" in a given area can be expected to increase in value on average over a term of years, the retiree's home will typically be expected to go up in value at a slower rate, if it does go up in value, for the following reasons:

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Not Every Home Will Grow at an "Average Rate", Continued

1.) The home gets older every year. The age of a home is a factor in valuation and appreciation. If the average home in a given area is 28 years old now, and the average house will be 26 years old in 20 years, then a 48-year-old home 20 years from now will be worth less than a 26-year-old home will be and will not be expected to have kept up with the "average growth rate."

2.) The above is corroborated by the fact that homes have a typical estimated life expectancy of 60 years, and thus, depreciate in value to some extent. An appropriate rate of depreciation might be 1.667% of the value of the home itself each year, separate and apart from the land, because typically, a 60 year life expectancy will apply (1/60 = 1.667%). On the other hand, should this be 3.333% per year (2 x 1.667%) if the home is 30 years old to begin with?

If a typical house is worth 77.5% of the combined value of the house and land together, and the 77.5% house portion is going up by 3.5% statistically, not counting age, but then depreciating at 1.667% a year, then 22.5% of the total value (the land portion) is going up by 3.5% annually, and 22.5% of the value (the home portion) is going up by the excess of 3.5% over 1.66%, which is 1.89% per year.

Therefore, the average growth rate for a house might only be 2.2433% ((22.5% x 3.5%) + (77.5% x 1.89%)), on average.

3.) Senior citizens typically do not restore or renovate their homes, especially if they are of the average household that has the need to borrow on a reverse mortgage. A high percentage of the "average" homes in any given area have new kitchens, bathrooms, and other primary aspects installed or refurbished every 20 to 25 years. A senior citizen's home will have a much lower restoration rate on average, which would bring the average growth rate in the above example well below the 2.2433% described above.

4.) Oftentimes, neighborhoods or surrounding areas start to turn for the worse, and mobile homeowners will move to more secure economic areas and neighborhoods where values normally increase at or above the average. Reverse mortgage borrowers are not able to do this, and are thus unable to move when value issues are likely to arise, and thus, have a less than average chance of being situated in a proper neighborhood for appreciation to be expected.

Based upon the above, we believe that it is a significant fallacy, and actually, a deceptive trade practice, for the reverse mortgage industry to tell homeowners that their homes can be expected to go up in value based upon statistical averages now being used.

Further, 4% as a normal projection rate seems ludicrous when the average home rate value increase in the last 20 years in the United States has been only 3.4%, before taking into account the issues described above.

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WISDOM ABOUT YOUR HOME

Buying a completed home from a reputable contractor or builder with excellent warranties, after close inspection, is acceptable.

Buying a home that you will remodel anytime soon, or building your own home, can be a much more expensive, unpredictable and stressful experience.

Buying a used home with close inspection that includes review for mold and Chinese wallpaper is normally the best move.

Please see a psychologist before concluding that you need more than 3,500 square feet to live a comfortable life with your family. Anything over 3,500 square feet is luxury or for in-laws or more than two children.

One of the best things about any house is who the neighbors are. It may be a great strategy to raise your children in an upper middle class environment, and not in a "rich people only" gated community.

Your home will grow in value at less than average, because your home is one year older every year.

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WISDOM ABOUT YOUR HOME, CONTINUED

1 divided by 60 years is 1.667% depreciation per year. If houses are going up by 4% a year, then your house is going up in value by 2.33% a year, and you have to maintain it!

If acquisition and selling costs are 10%, then you have to live in the home 4.3 years on average to recoup the cost of buying and selling it.

"I would rather rent than own" is not a bad conclusion if you would otherwise buy a house that is too small or not where you will eventually settle.

Statistically speaking, there is as much chance of losing money as there is in making money if you will hold a house for less than 4 years.

The money you set aside for your future "dream home" in ten years will hopefully grow at a much higher rate than 2.33% per year. A long term conservatively allocated stock and bond or mutual fund equivalent portfolio may average 10% over ten or twenty years by comparison, and doesn't leak when it rains, develop mold, or need to be repainted or redecorated.

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DEFINITION OF TENANCY BY THE ENTIRETIES

Joint tenancy with right of survivorship is not enough – TBE requires "the 6 unities:"

1. Unity of possession - both spouses have joint ownership and control.
2. Unity of interest - each spouse has the same interest in the account.
3. Unity of time - the interests of both spouses in the asset must originate simultaneously
4. Unity of title - both spouses must have ownership under the same title.
5. Survivorship - on the death of one spouse, the other spouse becomes the sole owner of the TBE property. A general power of appointment given to one spouse over joint assets may vitiate TBE status.
6. Unity of marriage - of course, the owners must be legally married under Florida law.
   Non-residents who own property in Florida can also claim the tenancy by the entireties immunity. *In Re Cauley*, 374 B.R. 311, 316 (Bankr. M.D. Fla. 2007)

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SPECIAL TENANCY BY THE ENTIRETIES ISSUES

Joint Accounts. Not with USAA, Strong Mutual funds and many others. You must read the account agreement to be sure. Better to set up a TBE LLC to own accounts.

Stock Certificates and Shareholder Agreements.

Tax Reporting and Tax Refunds.

Tangible Personal Property.

Automobiles and Other Registered Vehicles.

Real Estate Owned Outside of Florida.

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Medical Practices can be Owned by a Physician and His or Her Spouse as Tenants by the Entireties

Many professional associations and professional limited liability companies are converted to regular corporations and LLCs to allow for TBE ownership.

This can be very important when a physician leaves one practice and starts a new one or joins a new practice, and may be sued for things that occurred in the prior practice, or outside of the new practice.

In addition, practice interests can be owned under trusts for children to help save income tax.

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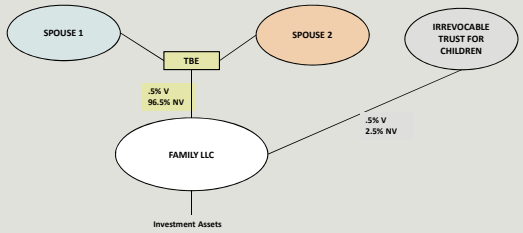
Tenancy by the Entireties Coupled with Charging Order Protection for a Married Couple



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A Florida Physician's Guide to Wages and Wage Accounts

Florida law provides limitations upon the access that creditors may have to "wages" and "wage accounts" earned and funded by Florida residents.

Florida Statute Section 222.11 provides that wages earned by a head of household will generally be immune from creditors.

Head of household has been defined to mean that the wage earner provides most of the support for themselves and other family members. For example, where the wage earner's spouse earns more than the wage earner, the wage earner may not qualify as "head of household" for creditor exemption purposes unless it can be shown that the actual wages earned by such person provide more than half of the support for at least one other family member.

Wages do not include dividends that are paid attributable to ownership of a professional practice, as opposed to being labeled as wages. Wages are subject to employment taxes.

A family member being supported should be a relative, or maybe a non-relative, who actually resides in the household with the wage earner.

Some courts have indicated that where the wage earner is a shareholder in a closely held corporation, and can thus manipulate between what would be received as wages and what would be received as dividends, then no wages may be protected. These unfortunate bankruptcy court decisions have not been appealed, and point out the importance of taking regular paychecks and having arm's-length employment agreements in place so that wages are paid periodically in a traditional manner to enhance the probability that they will be protected.

If wages are "creditor exempt," then it is important to maintain the creditor exempt status of the wages by depositing them into an account or other investments that will also be creditor exempt.

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A Florida Physician's Guide to Wages and Wage Accounts

Other creditor exempt assets that wages may be "converted to" can include paying down the mortgage on a protected home, investing the paycheck directly into a properly titled annuity contract or life insurance policy, funding a tenancy by the entireties account where the wage earner's spouse would not be sued by the same creditor as the wage earner, or making deposits into a **wage account.**

Physicians who have monies or investments that are not creditor exempt might be well advised to spend down the non creditor exempt savings, while accumulating wages in a wage or other protected account.

The Florida statutes do not explicitly impose any ownership, titling, naming or other specific requirement for an account to qualify as a wage account. A "wage account" can be owned by the physician earner, or may be held as tenancy by the entireties by the physician earner and the physician's spouse.

Most, if not all, married physicians whose spouses do not practice with them will be better protected by depositing their wages into a tenancy by the entireties account so that the wages may be safeguarded for two reasons: (1) the wage exemption rules as described above will apply, and (2) to "invade" a tenancy by the entireties bank account, a creditor must have a judgment against both spouses or show that the transfer into the account was Fraudulent transfer. If a wage check is a creditor exempt asset, then the deposit of the wage check directly into a protected tenancy by the entireties account should not be considered a Fraudulent transfer.

Many physicians and bankers waste a lot of time opening "wage accounts" where tenancy by the entireties accounts or other vehicles are just as, if not more, protective and would qualify as wage accounts anyway.

The statute simply says that wages are protected for six months in the account so long as they can be traced, and thus are not confused with non-wage or older wage deposits that would not be protected.

It makes sense to have an account funded solely by wages, and to "empty the account" into other exempt investments, at least every six months, so that there would never have to be a tracing and proof analysis as to wage money protection.

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CHOICES AND FACTORS WITH RESPECT TO ALLOCATION & PAYMENT OF MEDICAL PRACTICE INCOME FOR THE PRACTITIONER

Owned by Physician or as Tenants by the Entireties

S CORPORATION PRACTICE ENTITY

PAYEE	CREDITOR PROTECTED IN FLORIDA?	Current Taxes/Expenses	Tax Cuts and Jobs Act
Pension Plans	Yes	Costs for staff and to maintain plan – spouse on payroll to justify additional contribution. Highest tax - 39.6%. Nonqualified plans subject to 3.8% Medicare tax	Highest tax bracket is 37%.
Children on the Payroll	Yes – If goes to Roth IRA in the name of the child.	Child in lower rate (Lowest bracket – 10%) but 15.3% employment taxes apply.	Lowest bracket will be 10%. Standard Deduction = $12,000 Single or $24,000 MFJ
Wages paid to Doctor	If Head of Household, Florida Statute 222 may apply – deposit directly into protected account.	15.3% employment taxes on first $127,200, and then 2.9% over $127,200 plus .9% tax on wages exceeding $200,000 for single person and $250,000 for married joint filers.	Repeal of additional 0.9% tax not mentioned in new Act
Dividends to owner of entity.	Only if owner is protected – such as tenants by the entireties or a family limited partnership owning the entity.	Not subject to payroll taxes – but could be recharacterized by IRS, and not subject to the 3.8% Medicare tax unless distributions represent income from passive sources.	Business Income Deduction of 20% of Qualified Income Repeal of 3.8% Medicare tax not mentioned in new Act
Spouse on payroll.	Yes, if spouse is safe.	15.3% employment taxes on first $127,200, and then 2.9% over $127,200 plus .9% tax on wages exceeding $200,000 for single person and $250,000 for married joint filers.	Repeal of additional 0.9% tax not mentioned in new Act
Rent	Yes, if renting entity is protected. They protect PA assets if landlord has lien to enforce rent on long-term lease.	6.8% sales tax Subject to the 3.8% Medicare tax for single taxpayers with MAGI over $200,000 and MFJ taxpayers with MAGI over $250,000.	Repeal of 3.8% Medicare tax not mentioned in new Act State sales tax is reduced to 5.8% on commercial real property rentals
Interest owed to related parties.	If related party is protected.	Deductible as interest – receiving party pays interest income.	Interest expense not eliminated.

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DISABILITY INSURANCE AND DISABILITY INSURANCE PROCEEDS

Florida Statute Section 222.18 exempts disability payments from creditors.

Even lump sum proceeds resulting from settlement of a claim against a disability carrier will be exempt according to the Florida Supreme Court. *Zuckerman v. Hofrichter & Quiat, P.A.*, 646 So.2d 187 (Fla. 1994).

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PENSION PLANS AND IRAS ARE PROTECTED

Florida Statute 222.21 provides immunity from the creditors of any owner, participant in, or beneficiary of any money or assets payable to an owner, a participant, or a beneficiary from, a fund or account that is maintained in accordance with any plan or governing instrument pre-approved by the IRS as exempt from taxation under specified sections of the Internal Revenue Code.

This Florida statute provides exemption for pension, IRA and other "retirement accounts" which qualify under Internal Revenue Code Sections 401(a), 403(a), 403(b) and 408, 408A, 409, 414, 457, and 501(a). The new Bankruptcy Code provisions protect plans which are provided under Sections 401, 403, and 408.

Further, creditor immunity is provided for pension plans that have received determination letters from the IRS. These protected plans must be maintained in accordance with the applicable rules for tax qualification.

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PENSION PLANS AND IRAS ARE PROTECTED (CONT.)

The legislature confirmed by statutory change of Florida Statute Section 222.21 that beneficiaries of pension IRA and other qualified retirement accounts can receive these and maintain them as a creditor exempt asset, notwithstanding that the beneficiary may have personal creditors.

Beneficiaries who reside outside of Florida will only be protected if similar protection applies in their home state.

The above statutory change retroactively overrode a widely criticized 2009 Second District Court of Appeal Decision (Robertson v. Deeb, 16 So. 3d 936).

But what about for beneficiaries who reside in states that do not protect IRS proceeds.

Better in many cases to have IRA and pension benefits payable to protective trusts with "stretch provisions" or "conduit trusts" in many cases.

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Comparison of maximum contributions

	Defined Contribution	Defined Benefit	Maximum Contribution for a Cash Balance Plan
Employee age 60	$62,000	$254,000	$261,000
Employee age 55	$62,000	$194,000	$203,000
Employee age 50	$62,000	$148,000	$158,000
Employee age 45	$56,000	$113,000	$123,000
Employee age 40	$56,000	$ 87,000	$96,000

Permanency Requirement – A defined benefit or cash balance plan must be "permanent", which normally means that it will be in place at least five years, unless there are circumstances beyond the reasonable control of the Employer.

Anticipates 401(k) plan catch-up contributions.

Please note: The above numbers are approximations. Actual results will vary based on actual census data, plan assumptions and plan experience.

The presenters would like to thank Stephen Evers at Ascensus TPA Solutions for providing us with this slide.

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JOHN SMITH
A Combination 401(k)/ Profit Sharing/ Cash Balance Plan
For the Plan Year 01/01/2017 - 12/31/2017
CONTRIBUTION REPORT - DETAIL

P O H	Class	Last Name	First Name	AA	RA	Considered Earnings	Cash Balance Amount	Cash Balance %	Profit Sharing Amount	Profit Sharing %	Total Contribution Amount	Total Contribution %	Employer Cost	Employer %	% of Total
* * *	A	SMITH	JOHN	56	65	270,000	198,369	73.5	8,100	3.0	206,469	76.5	206,469	76.5	94.2
	B	JONES	TOM	27	65	22,724	909	4.0	1,932	8.5	2,840	12.5	2,840	12.5	1.3
	B	DOE	JANE	37	65	28,948	1,158	4.0	2,461	8.5	3,618	12.5	3,618	12.5	1.7
	B	WHITE	AMY	47	65	24,394	976	4.0	2,073	8.5	3,049	12.5	3,049	12.5	1.4
	B	ADAMS	MARTHA	39	65	25,284	1,011	4.0	2,149	8.5	3,160	12.5	3,160	12.5	1.4

Legend: P- Principal, O- Owner, H- Highly Compensated Employee

CONTRIBUTION REPORT - SUMMARY

	Considered Earnings	Cash Balance Amount	Cash Balance %	Profit Sharing Amount	Profit Sharing %	Total Contribution Amount	Total Contribution %	Employer: Cost	Employer: %	% of Total
Principals	270,000	198,369	73.5	8,100	3.0	206,469	76.5	206,469	76.5	94.2
Non-Principals	101,350	4,054	4.0	8,615	8.5	12,669	12.5	12,669	12.5	5.8
Grand Total	371,350	202,423	54.5	16,715	4.5	219,138	59.0	219,138	59.0	100.0

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EMPLOYEE CENSUS FORM

Name of Employer:

Provide complete information for all employees employed during the year, even if they have terminated.

Employee Name	Date of Birth	Date of Hire	Date of Termination	Annualized W-2 Compensation	Hours per Week	Ownership %

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Yes, Your IRA Can Own a Business – the ROBS

Excerpt from Leimberg LISI Newsletter #668, 07-Feb-17, thanks to Steve Leimberg. Full copy available upon request.

Subject: Brandon Ketron & Alan Gassman: ***Can I Use My IRA to Start a Business? Maybe, But With Great Power, Comes Great Responsibility.***

EXECUTIVE SUMMARY:

One potential way for an entrepreneur to fund a new business is with his or her retirement plan assets. This is known as a Rollover as Business Start Up Plan (ROBS).

A typical ROBS plan involves forming a new C-Corporation and adopting a simple 401(k) plan. The entrepreneur can then roll over his or her IRA account into the new 401(k) plan. The 401(k) plan then purchases stock in the new corporation. This results in the funding of a new corporation with the entrepreneur's former IRA account.i

While ROBS Plans do not violate the prohibited transaction rules per se, the IRS heavily scrutinizes these plans to ensure their compliance with these complex rules. If a Plan Participant engages in a prohibited transaction, the plan will be disqualified and result in a deemed taxable distribution of the entire account balance, which will also be subject to the 10% excise tax if the Plan Participant is under the age of 59 ½.

It is important to note that while a ROBS plan may satisfy the retirement plan rules initially, any failure to comply with the rules during the life of the plan will also result in a deemed distribution of the entire retirement plan.

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Roth IRA Conversion

Converting an IRA to a Roth IRA and paying the income tax triggered from unprotected assets may be a useful and easy to implement asset protection step.

If state law protects both the IRA and the post-conversion Roth IRA the conversion will use up liquid assets held outside the protection of the IRAs, e.g., funds in a brokerage account, to pay the income tax triggered on the conversion. The result will be full post tax dollars protected by the Roth IRA rather than merely pre-tax dollars protected in the regular IRA.

Roth IRAs have no mandatory distribution rules for the plan holder so dollars will not have to be removed from that protective structure as they eventually will from a regular IRA.

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Article Excerpt from Alan Gassman's Forbes Blog – August 8, 2018

New IRA Guidance On Pre-Kindergarten 529 Plans And Other Issues

Alan Gassman Contributor

529 College Savings Plans are like mutual funds, but the growth is never subject to tax as long as the Plan is used to pay college and graduate school tuition and permitted living expenses.

The 2017 Tax Act added a provision which allows 529 Plans to be used to pay up to $10,000 per year for each student in kindergarten through twelfth grade.

While many Plan sponsors have not yet modified their platforms to permit pre-college distributions, any 529 College Savings Plan can be converted to another Plan. Conversions are easy to accommodate, so if the Plan contributed to does not offer this feature when the child is ready, the Plan can be converted to one that does. Families should also know that the beneficiary of the Plan can be changed annually, so those cute little grandchildren better behave and send holiday cards if they want to stay in private school.

On July 30, 2018 the IRS confirmed that new regulations will limit the per year pre-college amount to $10,000 total per child, even when multiple 529 Plans are established for one child. This means that grandparents from both sides of the family cannot fund 529 Plans that would pay $20,000 a year of combined tuition, which would have been nice.

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529 Plan for K-12 and College Eductation

Year/Child's Age	Beginning Balance	Contribution	Withdrawal	Growth (6%)	Ending Balance
1	$ -	$ 75,000	$ -	$ 4,500	$ 79,500
2	$ 79,500	$ -	$ -	$ 4,770	$ 84,270
3	$ 84,270	$ -	$ -	$ 5,056	$ 89,326
4	$ 89,326	$ -	$ -	$ 5,360	$ 94,686
5	$ 94,686	$ -	$ (10,000)	$ 5,081	$ 89,767
6	$ 89,767	$ 75,000	$ (10,000)	$ 9,286	$ 164,053
7	$ 164,053	$ -	$ (10,000)	$ 9,243	$ 163,296
8	$ 163,296	$ -	$ (10,000)	$ 9,198	$ 162,494
9	$ 162,494	$ -	$ (10,000)	$ 9,150	$ 161,644
10	$ 161,644	$ -	$ (10,000)	$ 9,099	$ 160,742
11	$ 160,742	$ 75,000	$ (10,000)	$ 13,545	$ 239,287
12	$ 239,287	$ -	$ (10,000)	$ 13,757	$ 243,044
13	$ 243,044	$ -	$ (10,000)	$ 13,983	$ 247,026
14	$ 247,026	$ -	$ (10,000)	$ 14,222	$ 251,248
15	$ 251,248	$ -	$ (10,000)	$ 14,475	$ 255,723
16	$ 255,723	$ 75,000	$ (10,000)	$ 19,243	$ 339,966
17	$ 339,966	$ -	$ (10,000)	$ 19,798	$ 349,764
18	$ 349,764				

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ARTICLES

Unconventional Uses of 529 Plans Should Not Be Ignored by Taxpayers and Their Advisors

INTRODUCTION

BASIC BACKGROUND INFORMATION

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ANNUITY CONTRACTS

Florida offers unlimited protection of life insurance and the cash values of annuity contracts. The life insurance and annuity industries have come to market with mutual fund wrapped products that provide income tax deferral and creditor protection for policyholders and their families.

Florida Statute Section 222.14 provides as follows:

> **Exemption of cash surrender value of life insurance policies and annuity contracts from legal process. -- The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.**

This applies to variable annuities pursuant to a Florida Supreme Court decision.

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LIFE INSURANCE

The life insurance exemption language is contained in Florida Statute 222.14:

> **The cash surrender values of life insurance policies issued upon the lives of citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.**

- This is a shield against any creditor of the person whose life is so insured. It is not a shield for a debtor who owns a life insurance policy on someone else's life!
- It is also not a shield for the beneficiary of the policy. **In *In re Zesbaugh*, 190 B.R. 951 (Bankr. M.D. Fla. 1995). Better to have the policy payable to protective trusts than individuals or other entities!**

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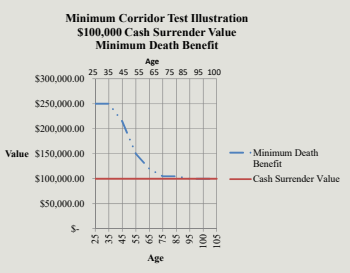
Tax Talk



Insured's Age	Percentage
40 or less	250%
45	215%
50	185%
55	150%
60	130%
65	120%
70	115%
75	105%
80	105%
85	105%
90	105%
95 or more	100%

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	Term Life	Whole Life	Universal Life	Variable Universal Life	Guaranteed Universal Life	Equity Index Life Distinguishing Feature
Distinguishing Feature	Provides protection for a specific period	Lifetime protection for as long as premiums are paid	Guaranteed minimum interest rate on investments accumulated in the accounts – interest rates are based on bonds only and can be higher than the minimum guaranteed	Combines premium and death benefit flexibility of universal life with investment choice of variable life	Death benefit is guaranteed if specified premiums are made timely for a given period of years	No loss of cash value in negative stock market years – rate of return will be a portion of index performance
Premium	Fixed, but will increase at each renewal	Fixed	Flexible since they are set by the policyholder	Flexible, like universal life	Fixed	Flexible, like universal life
Cash Value	None	Guaranteed	Account value minus the surrender charges	Not guaranteed; depends on performance of stocks	Can generate significant cash value (albeit at a higher premium)	See above
Death Benefit	Face amount of policy if death occurs within the term	Face amount of policy if in force when death occurs	Option A: maintain level death benefit Option B: face amount increases as cash value grows Option C: death benefit increases to facilitate a return of all premiums on death	Same options as universal life	Guaranteed if premiums paid timely; accelerated death benefit rider for chronic and terminal illness	Same options as universal life
Can Borrow Against Cash Value	N/A	Yes	Yes	50%; Subject to Regulation U	May lose "no-lapse" guarantee	Depends upon policy
Cash Value at Risk if Carrier Fails	N/A	Yes	Yes	No	Yes	Yes
Can be Sold without Series 6 License	Yes	Maybe	Yes	No	Yes	Yes
Life Settlement	Yes	Maybe	Yes	Maybe	Yes	Yes
Regulated By	State	State	State	FINRA and State	State	State

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What Alan Tells His Clients About Buying Term Insurance

- You can ask an independent agent who writes for many carriers to have the client take the physical so that they can get quotes from several carriers.
- You can ask that all results and quotes be confidential and not given to the bureau that all carriers belong to and share information with. Once a carrier turns the client down or "rates" the client all other carriers know.
- This is called an "informal application" and then the carriers can each give informal quotes for term coverage. If the client likes the quote then he or she can buy it.
- You might spread this among 2 or 3 carriers in case one goes under.
- Better to buy 6 $500,000 policies than one $3,000,000 policy- with separate carriers for financial security. You can't reduce the amount of coverage in a life insurance policy once purchased, but you can terminate smaller policies to adjust coverage downward when appropriate.
- Sample term rates for "preferred", "standard" and "standard smoker" individuals at ages 35, 40, 45, 50 and 55 are as follows:

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BUYING TERM INSURANCE

AGE 30

	PREFERRED		STANDARD		STANDARD SMOKER	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
10 Year Term	$378	$328	$658	$518	$1,548	$1,218
15 Year Term	$458	$398	$768	$688	$1,918	$1,438
20 Year Term	$608	$478	$968	$738	$2,278	$1,638
30 Year Term	$938	$768	$1,518	$1,218	$3,908	$3,018

35 Year Old (Per $1,000,000 of Coverage)

AGE 35

	PREFERRED		STANDARD		STANDARD SMOKER	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
10 Year Term	$375	$345	$735	$565	$1,685	$1,345
15 Year Term	$515	$415	$915	$805	$2,135	$1,775
20 Year Term	$665	$565	$1,105	$945	$2,885	$2,265
30 Year Term	$1,015	$825	$1,735	$1,375	$4,705	$3,555

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BUYING TERM INSURANCE

AGE 40

	PREFERRED		STANDARD		STANDARD SMOKER	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
10 Year Term	$505	$435	$925	$785	$2,405	$2,005
15 Year Term	$655	$575	$1,215	$1,035	$3,125	$2,485
20 Year Term	$865	$745	$1,505	$1,255	$4,345	$3,185
30 Year Term	$1,495	$1,135	$2,465	$1,985	$7,175	$5,275

AGE 50

	PREFERRED		STANDARD		STANDARD SMOKER	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
10 Year Term	$1,235	$1,025	$2,145	$1,625	$6,435	$4,295
15 Year Term	$1,785	$1,235	$2,805	$2,065	$7,825	$5,725
20 Year Term	$2,225	$1,625	$3,425	$2,715	$10,425	$6,865
30 Year Term	$4,025	$2,645	$6,245	$4,785	$13,719	$10,109

AGE 60

	PREFERRED		STANDARD		STANDARD SMOKER	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
10 Year Term	$3,098	$2,198	$4,808	$3,278	$13,028	$8,308
15 Year Term	$4,488	$3,048	$7,088	$5,218	$17,658	$12,978
20 Year Term	$5,798	$4,078	$9,488	$6,668	$22,048	$15,058
30 Year Term	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available

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A LOGICAL GUIDE TO SELECTING BUY/SELL AGREEMENT ARRANGEMENTS-TRADITIONAL CHOICES ARE NOT ALWAYS THE BEST

BY ALAN S. GASSMAN, J.D., LL.M.

A. Entity Redemption Arrangements. The company owns the life insurance policy and is the beneficiary thereof. Upon receipt of the life insurance proceeds, the company is to use such proceeds to buy out the deceased owner.

Will there be enough money to (A) buy out the deceased owner and (B) have the deceased owner released from any and all guarantees and obligations associated with the business?

1. If it is not practical to have the deceased owner released for contractual or other reasons, should the part of the life insurance proceeds that would otherwise be kept by the company as key man insurance be escrowed pending satisfaction of all releases that the deceased owner may have responsibility for.

2. How can the deceased owner's family be sure that the monies received from the life insurance policy will actually be used to satisfy contractual buy-out agreements?

3. What if the company claims that for some reason the agreement is not enforceable or that there are claims against the deceased owner that offset what would be paid to him or her.

4. What if the company has a major creditor claim against it (what if the deceased owner died in a car accident that he or she caused while driving a company vehicle and the company is now being sued by others who died in the accident?)

5. What if the company goes into bankruptcy and the family of the deceased owner becomes just another creditor in a bankruptcy proceeding?

6. For income tax purposes the remaining shareholders do not get a stepped up basis for the stock purchased.. The stock simply becomes treasury stock.

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A LOGICAL GUIDE TO SELECTING BUY/SELL AGREEMENT ARRANGEMENTS-TRADITIONAL CHOICES ARE NOT ALWAYS THE BEST

BY ALAN S. GASSMAN, J.D., LL.M.

B. To avoid the above potential problems consider a cross-purchase agreement?

Each owner may own the policy or policies on the other owners. Thus the policy proceeds should be protected from creditors of the company.

Also, each purchasing shareholder will get a tax basis in the purchased stock equal to the purchase price thereof.

1. However, policy proceeds will not be protected from creditors of the surviving owner who would receive policy proceeds.

2. Also, contractual disputes could result in the surviving owner using the funds for other purposes while litigating over the obligation to pay and becoming insolvent.

3. Further, if there are more than 2 shareholders, the on the death of one the policies owned on the others would need to be transferred to rebalance between them, thus causing issues under the transfer for value rules. For example, if there are 4 equal shareholders there have to be 4 polices each owned 1/3rd each by each 3 shareholders on the fourth, and if one leaves the company the remaining 3 policies have to be readjusted as to ownership.

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SEAL OFF LIABILITY WHEREVER YOU CAN:

A. Use limited liability entities.

B. Use separate entities for separate operations.

C. Export or otherwise avoid activities or functions which invite liability.

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FIREWALL PROTECTION

Use Firewall Protection and Multiple Entities Where Possible:

A. Two cabs in each LLC.

B. Rental properties under separate LLC's managed by a judgment-proof nephew who needs to earn money.

C. Put the business that may be sued under a company that is separate from a large portion of the assets and intellectual property associated therewith.

D. Maintain proper corporate formalities.

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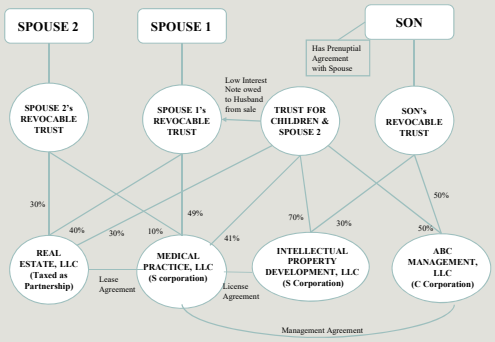
POSSIBLE FAMILY LOGISTICS FOR A SUCCESSFUL BUSINESS AND ESTATE PLAN



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Managers and officers of a company can be held personally responsible for their personal acts if someone is injured or harmed.

Often a "management company" will be the manager, but who manages the management company?

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Under the Doctrine of Respondeat Superior the employer is responsible for what an employee does.

Normally there is an exception to this for independent contractors – but how can you be sure that a person is an independent contractor versus being an employee.

A carefully tailored agreement may be essential as is the proper design and implementation of functions and responsibilities.

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(CONTINUED)

You may call someone an independent contractor, but if a jury or state agency decides that they are an employee, then you may have:

a) Liability for their actions and inactions.

b) Liability to support them for the rest of their lives if they become incapacitated, and you should have had Worker's Compensation insurance.

c) Risk of disqualification of your pension plan. Special language in the plan documents may help protect against this.

d) Whistleblowers may make a fortune reporting you.

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For an employee, Worker's Compensation Law requires the payment of insurance, and limits the liability of the employer if the insurance is in place.

Example: An employee is killed when another employee negligently operates equipment. The deceased employee's estate receives a payment from the Worker's Compensation carrier, and the employer has no liability.

If the person killed had been an independent contractor, then the liability of the employer could be unlimited.

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EMPLOYEE DISCUSSION: APPLICANT STATEMENT

APPLICANT'S STATEMENT:

I certify that answers given herein are true and complete to the best of my knowledge.

I authorize investigation of all statements contained in this Application for Employment as may be necessary in arriving at an employment decision.

I further authorize Gassman, Crotty & Denicolo, P.A. access to reports prepared by any credit reporting bureau or agency, and direct such agencies to provide a copy of my report at the request of Gassman, Crotty & Denicolo, P.A.

This application for employment shall be considered active for a period of time not to exceed 45 days. Any applicant wishing to be considered for employment beyond this time period should inquire as to whether or not applications are being accepted at that time.

I hereby understand and acknowledge that, unless otherwise defined by applicable law, any employment relationship with this organization is of an "at will" nature, which means that the Employee may resign at any time and that the Employer may discharge Employee at any time with or without cause. It is further understood that this "at will" employment relationship may not be changed by any written document or by conduct unless such a change is specifically acknowledged in writing by an authorized executive of this organization.

In the event of employment, I understand that false or misleading information given in my application or interview(s) may result in discharge. I understand, also, that I am required to abide by all rules and regulations of the Employer.

Signature of Applicant:_____ Date:_____

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EMPLOYEE DISCUSSION: AUTHORIZATION FOR RELEASE

AUTHORIZATION FOR RELEASE OF INFORMATION FOR BACKGROUND INVESTIGATION

In consideration of my application for employment (including contract for services) with GASSMAN, BATES & ASSOCIATES, P.A. I authorize GASSMAN, BATES & ASSOCIATES, P.A., acting on its own or as an agent of any other company or organization and their respective agents, to conduct and report research and share with each other, information about my background including, but not limited to, information about my prior employment, education, driving record, consumer credit history, criminal record, workers compensation claims and general public records history.

Further, I understand that an investigative consumer report may be requested from various Federal, State, Local and other agencies. I understand that such an investigative report may contain information about my background, mode of living, character and personal reputation; and that I am entitled to be advised of the nature and scope of the investigation requested within a reasonable time after I ask for this information in writing.

I HEREBY AUTHORIZE, WITHOUT RESERVATION, ANY PERSONS, AGENCY OR OTHER ENTITY CONTACTED BY GASSMAN, BATES & ASSOCIATES, P.A. TO FURNISH THE ABOVE MENTIONED INFORMATION.

I understand that any investigative consumer report requested will be used strictly for employment purposes as defined under the Fair Credit Reporting Act §603(h), as a report to be used for the purpose of evaluation for employment, promotion reassignment or retention as an employee. I release GASSMAN, BATES & ASSOCIATES, P.A., their respective officers, directors, employees and agents, and all persons, agencies, and entities providing information or reports about me from any and all liability arising out of the release of any such information or reports.

The information requested below is needed for the purpose of positive identification and to complete verification procedures (Please print clearly).

Name:	
Other Names Used (maiden, alias):	
Social Security Number:	Date of Birth:
Race:	
Driver's License Number:	
Present Address:	
City/State/Zip:	From (mo/yr): to
Present Phone:	
Cell Phone:	
Prior Address #1:	
City/State/Zip:	From (mo/yr): to
Prior Address #2:	
City/State/Zip:	From (mo/yr): to
Signature:	Date:

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gcrotty@gassmanpa.com
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The Doctor Is In - - - But Where Is The Tax and Estate Planning? – LawEasy 2.14.2020

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EMPLOYEE DISCUSSION: PROBATIONARY PERIOD ACKNOWLEDGMENT

Employee
90 Day Probation Notification Confirmation

EMPLOYEE NAME_____
[Please Print]

As you become an employee, we wish to inform you that all employees are governed by a 90-day probationary period.

The Florida Unemployment Compensation Law provides that any claimant who has voluntarily left work without good cause or has been discharged by the new employer for unsatisfactory job performance within the 90-day probationary period, shall be disqualified from receiving benefits.

Please sign below that the 90-day probationary period has been explained to you.

EMPLOYEE SIGNATURE:_____
Date:_____

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EMPLOYEE DISCUSSION: COMPANY POLICY ON SEXUAL HARASSMENT

GASSMAN, CROTTY & DENICOLO, P.A. will not tolerate harassment of any kind toward any of its employees. We have taken steps to protect you from harassment in the workplace.

Your cooperation is vital for your protection and well-being. Please observe the following procedures and know your rights as stated below:

1. It is against our policy for any worker, whether male or female, to harass another worker in words or actions. Each of the following is against our policy.
   a) Making unwelcome sexual advances or requesting sexual favors;
   b) Making comments on a worker's physical appearance or body, or making comments on a worker's presumed sexual habits, preferences, desires, etc.;
   c) Touching or caressing a worker without the worker's prior, express permission;
   d) Displaying obscene or sexually-oriented or suggested photographs, drawings or other visual or oral material;
   e) Engaging in obscene or sexually-oriented gestures, activities or comments;
   f) Creating an intimidating, hostile or offensive work environment to any employee or any class or group of employees.
2. It is against our policy for any worker to use a worker's submission to or rejection of the above conduct by another worker as a factor in any employment decision affecting the worker submitting to or rejecting the conduct.
3. We will not condone any harassment of employees. All employees, including, but not limited to, supervisors and management personnel, will be subject to severe discipline, including discharge for any harassing behavior.
4. Any employee who feels victimized by harassment should immediately report it to any lawyer working for the law firm or any management personnel, or an employment lawyer employed by the _____ law firm (we will pay for the expense of any such notification). We will undertake a careful investigation, which may include interviewing other employees who have knowledge of the alleged incident or similar situations. Your complaint, along with the investigative steps and findings, will be documented as thoroughly as possible. Any appeals from this decision will be handled in accordance with our dispute resolution procedures.
5. No employee will be subject to any form of retaliation or discipline for pursuing a harassment complaint.

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EMPLOYEE DISCUSSION: COMPUTER USAGE ACKNOWLEDGMENT

ACKNOWLEDGMENT

THE UNDERSIGNED, an Employee of GASSMAN, CROTTY & DENICOLO, P.A., does hereby acknowledge that with respect to e-mail and Internet access in the office on the computers that I operate, that GASSMAN, CROTTY & DENICOLO, P.A. does periodically monitor the use, and may do so without notice. I understand that the computer system is for business use only, and that my activities on the computer for personal use when I am "off the clock" may be monitored. The above includes AOL Instant Messenger, MSN Messenger and any other instant messenger service. Employee agrees not to download any programs from the Internet without approval.

_____

"Employee"

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EVALUATE ALL RELATIONSHIPS FOR POSSIBLE ISSUES.

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Written agreements with exculpation clauses, arbitration clauses, and lawyer fee clauses can be essential - or horrendous – depending on whose side you are on.

Have customers, suppliers, contractors and other third parties sign waiver, hold harmless and releases:

I waive any rights I would have unless you do something really, really bad.

I agree to hold you harmless, and thus pay for any expenses or liabilities you might incur if I pursue you nevertheless.

I release you from any such liabilities that may occur in the future, unless you are really, really bad (clearly willful misconduct or gross neglect).

Consider arbitration provisions to apply to key employees for the following reasons:

Privacy

Avoidance of runaway juries.

High arbitration filing fees.

Disarms many employment rights' lawyers.

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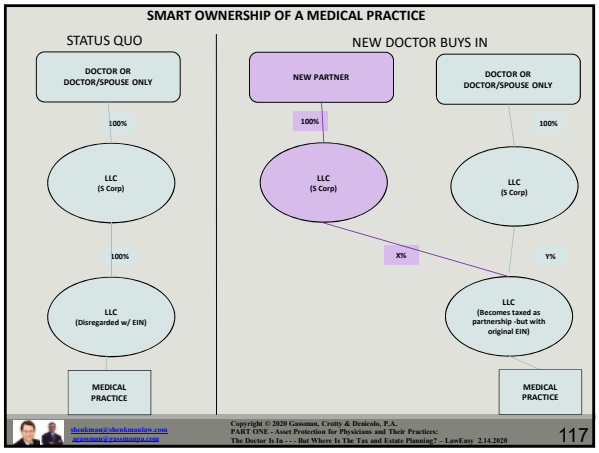

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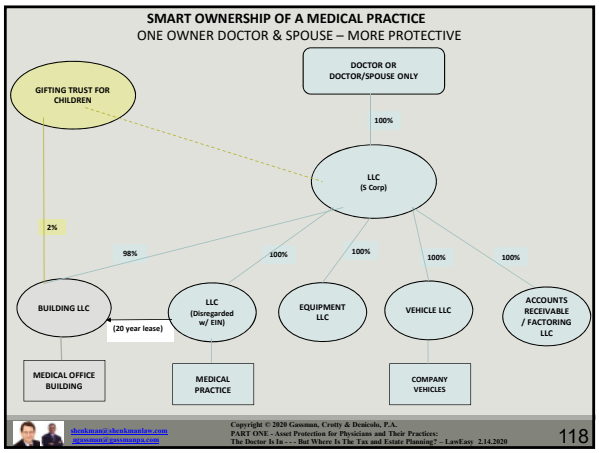
SMART OWNERSHIP OF A MEDICAL PRACTICE
ONE OWNER DOCTOR & SPOUSE – MORE PROTECTIVE
DOCTOR OR DOCTOR/SPOUSE ONLY
GIFTING TRUST FOR CHILDREN
100%
LLC (S Corp)
2%
98%
100%
100%
100%
100%
BUILDING LLC
(20 year lease)
LLC (Disregarded w/ EIN)
EQUIPMENT LLC
VEHICLE LLC
ACCOUNTS RECEIVABLE / FACTORING LLC
MEDICAL OFFICE BUILDING
MEDICAL PRACTICE
COMPANY VEHICLES
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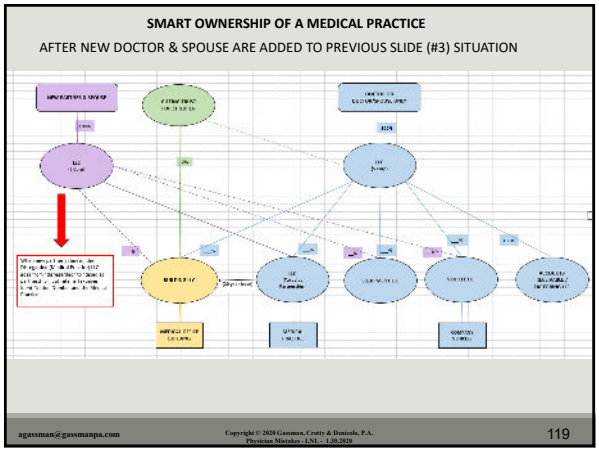
SMART OWNERSHIP OF A MEDICAL PRACTICE
AFTER NEW DOCTOR & SPOUSE ARE ADDED TO PREVIOUS SLIDE (#3) SITUATION
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Physician Mistakes - LNL - 1.20.2020
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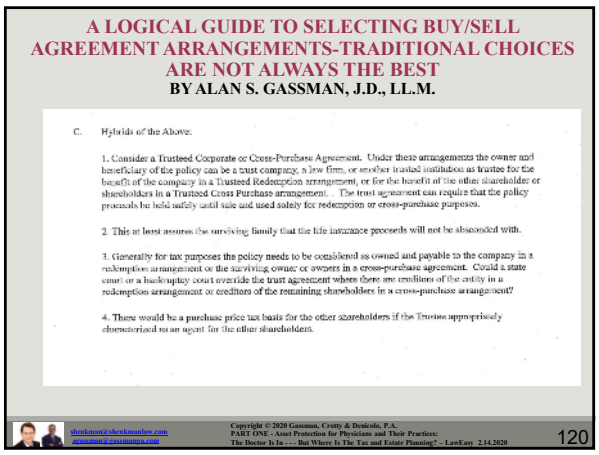
A LOGICAL GUIDE TO SELECTING BUY/SELL AGREEMENT ARRANGEMENTS-TRADITIONAL CHOICES ARE NOT ALWAYS THE BEST
BY ALAN S. GASSMAN, J.D., LL.M.
C. Hybrids of the Above:
1. Consider a Trusteed Corporate or Cross-Purchase Agreement. Under these arrangements the owner and beneficiary of the policy can be a trust company, a law firm, or another trusted institution as trustee for the benefit of the company in a Trusteed Redemption arrangement, or for the benefit of the other shareholder or shareholders in a Trusteed Cross Purchase arrangement. The trust agreement can require that the policy proceeds be held safely until sale and used solely for redemption or cross-purchase purposes.
2. This at least assures the surviving family that the life insurance proceeds will not be absconded with.
3. Generally for tax purposes the policy needs to be considered as owned and payable to the company in a redemption arrangement or the surviving owner or owners in a cross-purchase agreement. Could a state court or a bankruptcy court override the trust agreement where there are creditors of the entity in a redemption arrangement or creditors of the remaining shareholders in a cross-purchase arrangement?
4. There would be a purchase price tax basis for the other shareholders if the Trustee appropriately characterized as an agent for the other shareholders.
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RUN YOUR BUSINESS RESPONSIBLY!

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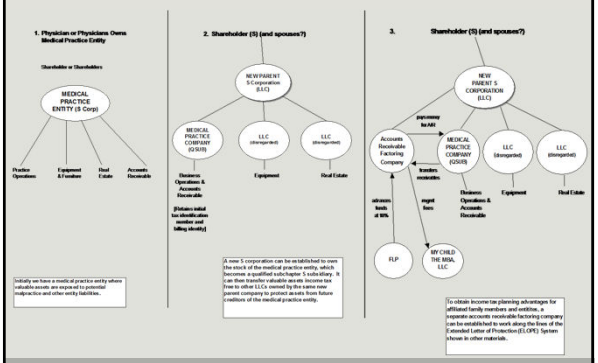
NEW PARENT F REORGANIZATION (SHOWING ACCOUNTS RECEIVABLE FACTORING ARRANGEMENT)



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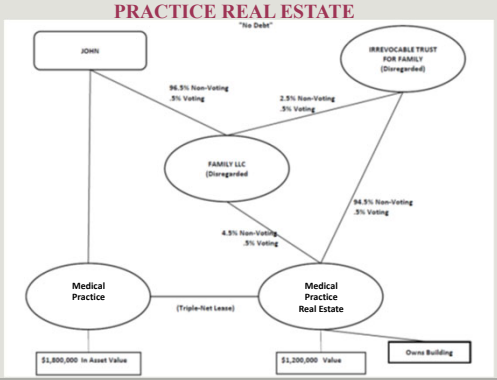
DEBT PLANNING FOR THE MEDICAL PRACTICE AND PRACTICE REAL ESTATE



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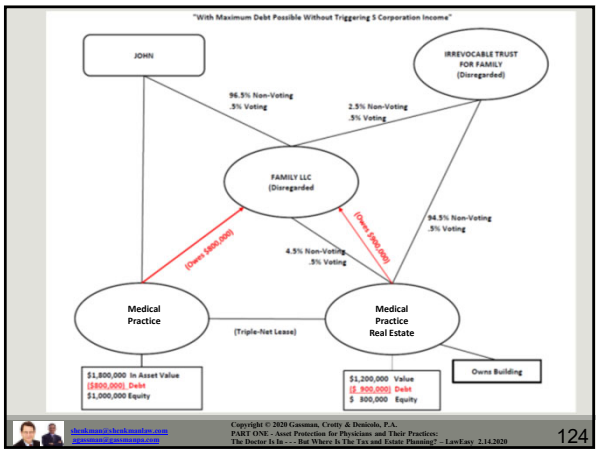
"With Maximum Debt Possible Without Triggering S Corporation Income"
JOHN
IRREVOCABLE TRUST FOR FAMILY (Disregarded)
96.5% Non-Voting .5% Voting
2.5% Non-Voting .5% Voting
FAMILY LLC (Disregarded
(Owes $800,000)
(Owes $400,000)
94.5% Non-Voting .5% Voting
4.5% Non-Voting .5% Voting
Medical Practice
(Triple-Net Lease)
Medical Practice Real Estate
$1,800,000 In Asset Value
($800,000) Debt
$1,000,000 Equity
$1,200,000 Value
($ 800,000) Debt
$ 800,000 Equity
Owns Building
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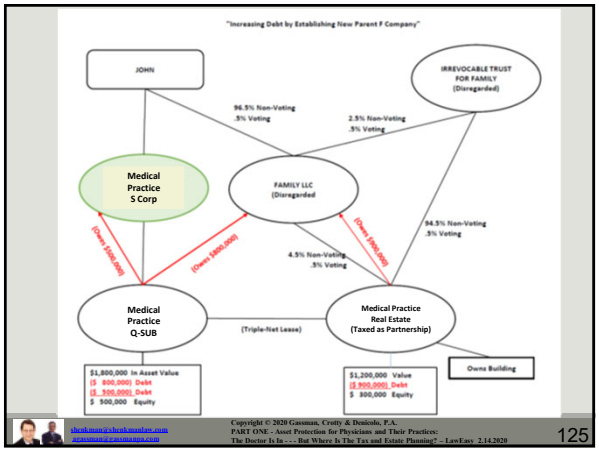
"Increasing Debt by Establishing New Parent F Company"
JOHN
IRREVOCABLE TRUST FOR FAMILY (Disregarded)
96.5% Non-Voting .5% Voting
2.5% Non-Voting .5% Voting
Medical Practice S Corp
FAMILY LLC (Disregarded
(Owes $400,000)
(Owes $800,000)
94.5% Non-Voting .5% Voting
4.5% Non-Voting .5% Voting
Medical Practice Q-SUB
(Triple-Net Lease)
Medical Practice Real Estate (Taxed as Partnership)
$1,800,000 In Asset Value
($ 800,000) Debt
($ 500,000) Debt
$ 500,000 Equity
$1,200,000 Value
($ 800,000) Debt
$ 800,000 Equity
Owns Building
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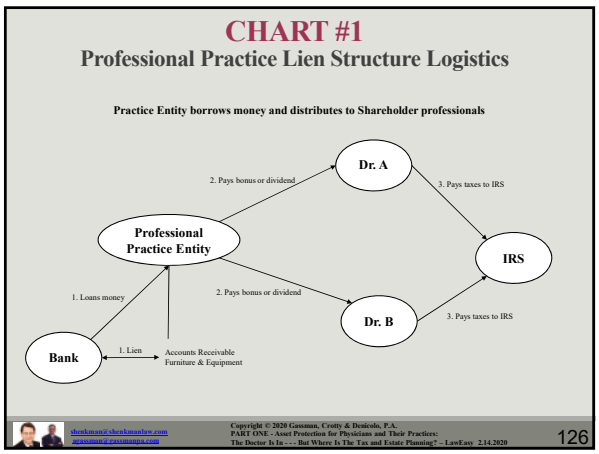
CHART #1
Professional Practice Lien Structure Logistics
Practice Entity borrows money and distributes to Shareholder professionals
Dr. A
2. Pays bonus or dividend
3. Pays taxes to IRS
Professional Practice Entity
IRS
1. Loans money
2. Pays bonus or dividend
Dr. B
3. Pays taxes to IRS
Bank
1. Lien
Accounts Receivable
Furniture & Equipment
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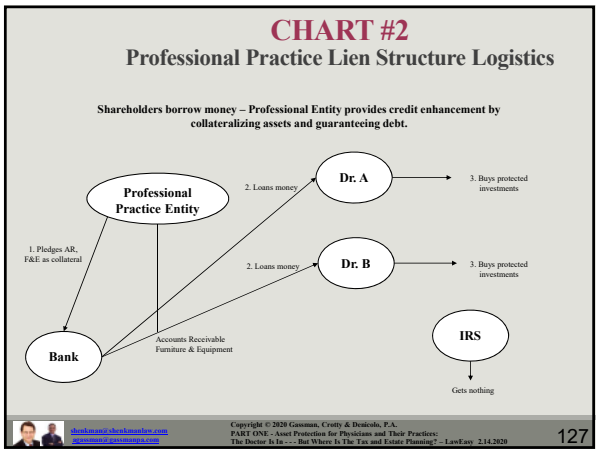
CHART #2
Professional Practice Lien Structure Logistics
Shareholders borrow money – Professional Entity provides credit enhancement by collateralizing assets and guaranteeing debt.
Professional Practice Entity
Dr. A
Dr. B
Bank
IRS
1. Pledges AR, F&E as collateral
2. Loans money
2. Loans money
3. Buys protected investments
3. Buys protected investments
Accounts Receivable
Furniture & Equipment
Gets nothing
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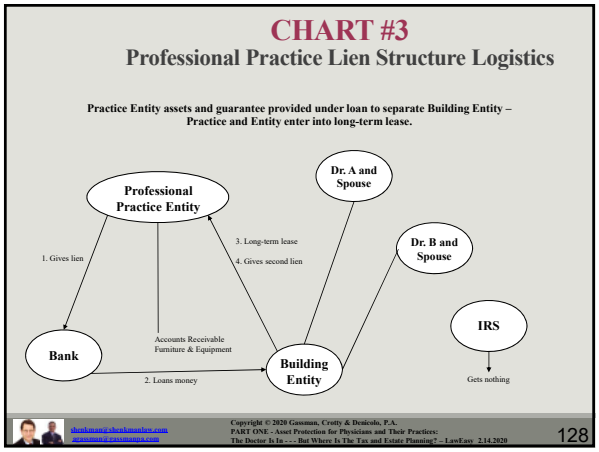
CHART #3
Professional Practice Lien Structure Logistics
Practice Entity assets and guarantee provided under loan to separate Building Entity – Practice and Entity enter into long-term lease.
Professional Practice Entity
Dr. A and Spouse
Dr. B and Spouse
Bank
Building Entity
IRS
1. Gives lien
3. Long-term lease
4. Gives second lien
Accounts Receivable
Furniture & Equipment
2. Loans money
Gets nothing
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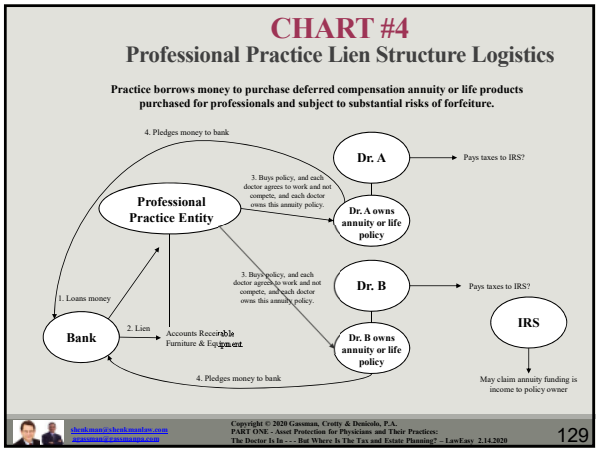
CHART #4
Professional Practice Lien Structure Logistics
Practice borrows money to purchase deferred compensation annuity or life products purchased for professionals and subject to substantial risks of forfeiture.
4. Pledges money to bank
Dr. A
Pays taxes to IRS?
3. Buys policy, and each doctor agrees to work and not compete, and each doctor owns this annuity policy.
Professional Practice Entity
Dr. A owns annuity or life policy
3. Buys policy, and each doctor agrees to work and not compete, and each doctor owns this annuity policy.
Dr. B
Pays taxes to IRS?
1. Loans money
Bank
2. Lien
Accounts Receivable
Furniture & Equipment
Dr. B owns annuity or life policy
IRS
4. Pledges money to bank
May claim annuity funding is income to policy owner
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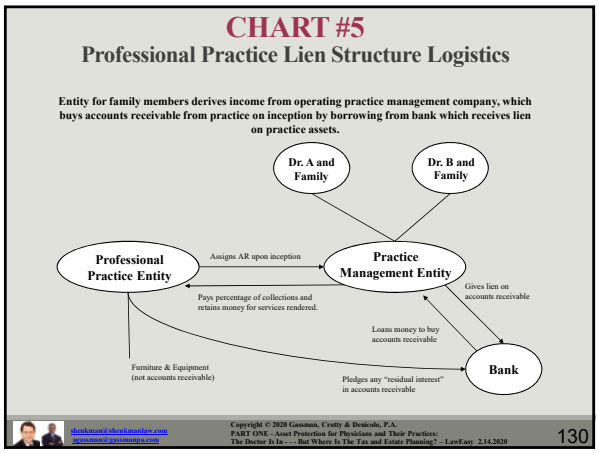
CHART #5
Professional Practice Lien Structure Logistics
Entity for family members derives income from operating practice management company, which buys accounts receivable from practice on inception by borrowing from bank which receives lien on practice assets.
Dr. A and Family
Dr. B and Family
Professional Practice Entity
Assigns AR upon inception
Practice Management Entity
Pays percentage of collections and retains money for services rendered.
Gives lien on accounts receivable
Loans money to buy accounts receivable
Furniture & Equipment (not accounts receivable)
Bank
Pledges any "residual interest" in accounts receivable
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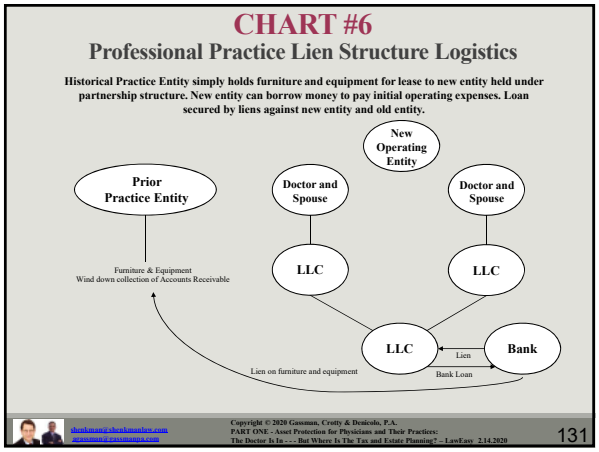
CHART #6
Professional Practice Lien Structure Logistics
Historical Practice Entity simply holds furniture and equipment for lease to new entity held under partnership structure. New entity can borrow money to pay initial operating expenses. Loan secured by liens against new entity and old entity.
New Operating Entity
Prior Practice Entity
Doctor and Spouse
Doctor and Spouse
LLC
LLC
Furniture & Equipment
Wind down collection of Accounts Receivable
LLC
Bank
Lien
Bank Loan
Lien on furniture and equipment
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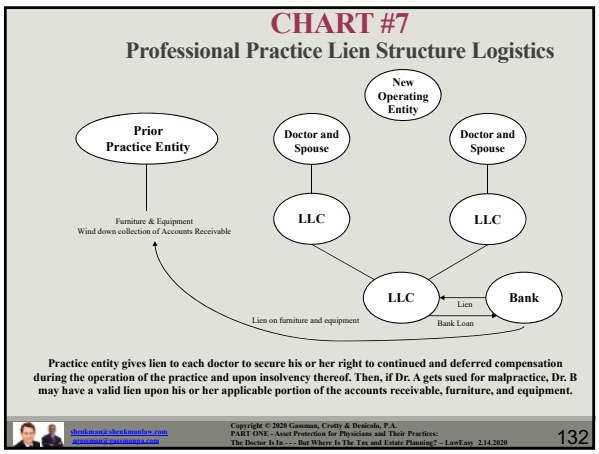
CHART #7
Professional Practice Lien Structure Logistics
New Operating Entity
Prior Practice Entity
Doctor and Spouse
Doctor and Spouse
LLC
LLC
Furniture & Equipment
Wind down collection of Accounts Receivable
LLC
Bank
Lien
Bank Loan
Lien on furniture and equipment
Practice entity gives lien to each doctor to secure his or her right to continued and deferred compensation during the operation of the practice and upon insolvency thereof. Then, if Dr. A gets sued for malpractice, Dr. B may have a valid lien upon his or her applicable portion of the accounts receivable, furniture, and equipment.
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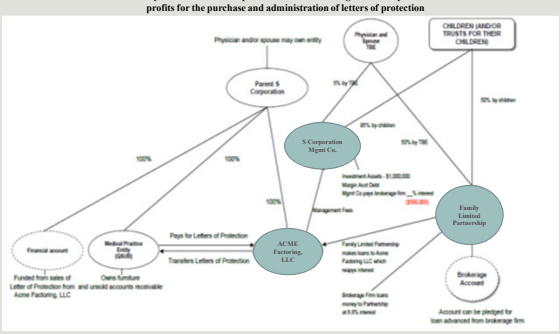
EXTENDED LETTER OF PROTECTION ENHANCEMENT (ELOPE SYSTEM)

To enable a Family Limited Partnership and child-owned management entity to derive reasonable profits for the purchase and administration of letters of protection



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SECTION 199A – TWO MAIN RULES TO KNOW

			Situation	Result
1	Specified Service Trade or Business	A	Taxpayer's Taxable Income is under $315,000 for Taxpayers married filing jointly, or $157,500 for single filers	**No Limitation applies**
		B	Taxpayer's Taxable Income is between $315,000-$415,000 for Taxpayers married filing jointly or $157,500-$207,500 for single filers	Limitation is phased in by the amount Taxable Income exceeds threshold amount Example – MFJ Taxable Income of $365,000. Deduction is equal to 10% of QBI (50% ((365-315)/100) * 20% Deduction.
		C	Taxpayer's Taxable Income Exceeds $415,000 for Taxpayers married filing jointly or $207,500 for single filers	**No Deduction**
2	Wage and Qualified Property Test	A	Taxpayer's Taxable Income is under $315,000 for Taxpayers married filing jointly, or $157,500 for single filers	**No Limitation applies**
		B	Taxpayer's Taxable Income is between $315,000-$415,000 for Taxpayers married filing jointly or $157,500-$207,500 for single filers	Limitation is phased in by the amount Taxable Income exceeds threshold amount
		C	Taxpayer's Taxable Income Exceeds $415,000 for Taxpayers married filing jointly or $207,500 for single filers	Limitation applies unless 50% of Wages or 25% of Wages plus 2.5% of Qualified Property are met at the entity level

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ITEMS RELATING TO: INDIVIDUAL TAXPAYERS QUALIFIED BUSINESS INCOME (SECTION 199A)

Filing Status	Tax Year 2019	Tax Year 2018
Single	$160,700	$157,500
Married Jointly	$321,400	$315,000
Head of Household	$160,700	$157,500

Phase-out

Married Filing Jointly - $321,400 – $421,400

Single/Head of Household - $160,700 – $210,700

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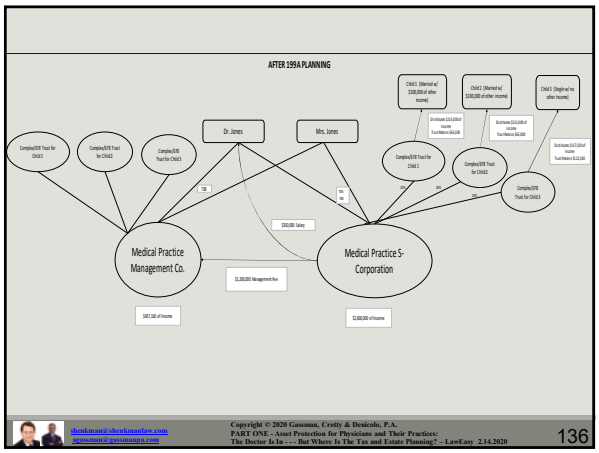
AFTER 199A PLANNING
Dr. Jones
Mrs. Jones
Medical Practice Management Co.
Medical Practice S-Corporation
$100,000 Salary
$1,300,000 Management Fee
$100,000 of Income
$1,800,000 of Income
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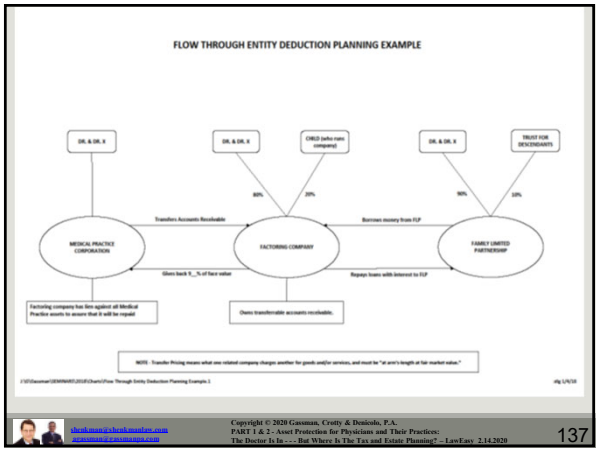
FLOW THROUGH ENTITY DEDUCTION PLANNING EXAMPLE
DR. & DR. X
DR. & DR. X
CHILD (who runs company)
DR. & DR. X
TRUST FOR DESCENDANTS
80%
20%
90%
10%
Transfers Accounts Receivable
Borrows money from FLP
MEDICAL PRACTICE CORPORATION
FACTORING COMPANY
FAMILY LIMITED PARTNERSHIP
Gives back 9_% of face value
Repays loans with interest to FLP
Factoring company has lien against all Medical Practice assets to assure that it will be repaid
Owns transferrable accounts receivable.
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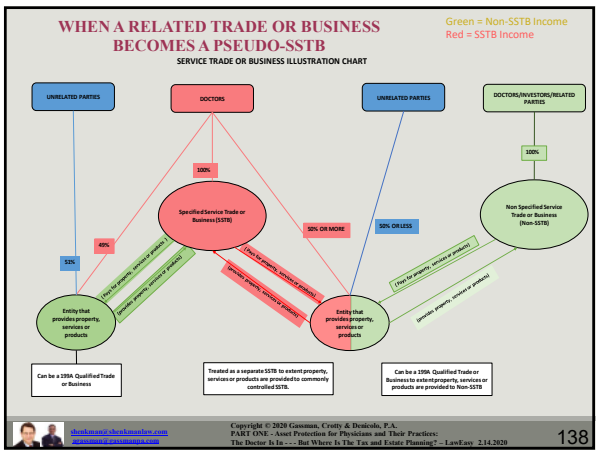
WHEN A RELATED TRADE OR BUSINESS BECOMES A PSEUDO-SSTB
Green = Non-SSTB Income
Red = SSTB Income
SERVICE TRADE OR BUSINESS ILLUSTRATION CHART
UNRELATED PARTIES
DOCTORS
UNRELATED PARTIES
DOCTORS/INVESTORS/RELATED PARTIES
100%
100%
Specified Service Trade or Business (SSTB)
Non Specified Service Trade or Business (Non-SSTB)
50% OR MORE
50% OR LESS
51%
49%
(Keys for property, services or products)
(provides property, services or products)
Entity that provides property, services or products
Can be a 199A Qualified Trade or Business
Treated as a separate SSTB to extent property, services or products are provided to commonly controlled SSTB.
Can be a 199A Qualified Trade or Business to extent property, services or products are provided to Non-SSTB
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ASSET PROTECTION CHECKLIST – Page 1

	PROTECTED OWNERSHIP CATEGORIES	NOTES		LIABILITY INSULATION	NOTES
1	Assets exempt by Florida Constitution, Statute, Common Law or Federal Law. *(Note: The above exceptions do not apply to the IRS, FTC, SEC, or other "Super Creditors", such as the Department of Justice when pursuing RICO perpetrators.)*		1	Make sure housekeeper, in-laws, and all others are covered if they drive your cares or reside in your residence.	
1(a)	Homestead.		2	Car ownership, and which parent signed to be responsible for the driving of a minor.	
1(b)	Tenancy by the entireties.		3	Car driving by children, spouses, employees and others.	
1(c)	Pension and IRA.		4	Firewall protection provided by LLC's, companies and various partnerships (LLP's, LP's and LLLP's).	
1(d)	Life insurance policies.		5	Triple Net Lease language to protect landlord – must give tenant total control of property.	
1(e)	Annuities		6	Managers may get sued.	
1(f)	529 Plans		7	Delegate to management company.	
1(g)	Disability and Social Security Benefits		8	Guests may sign releases.	
1(h)	Others		9	Independent contractor arrangements.	
2	Charging Order Protection.		10	Bartenders for personal parties.	
3	Property owned by others.		11	No guests on wave runners.	
4	Property sold for Note or annuity payment rights.		12	No alcohol served to anyone under the age of 21.	
5	Third Party Settled Trusts.		13	Appropriate underlying and umbrella liability insurance – for each property, car, 4-wheeler, etc. But beware of exceptions and illegal situations that will not be covered.	
6	Self-Settled Trusts in Asset Protection Trust jurisdiction.				
7	Foreign assets, entities and accounts in jurisdictions that do not recognize U.S. judgments.				
	BUSINESS AND INVESTMENT CONSIDERATIONS			OTHER CONSIDERATIONS	
1	Liability and casualty insurance review, with personal use interaction and business umbrella to be considered.		1	Income and estate tax avoidance – buy a felony to avoid paying IRS taxes or to conspire to help someone avoid such payment – same applies as to debt owed directly to the FDIC and certain other governmental creditors.	
2	Friendly lenders.		2	Marriage and divorce – ex-spouse cannot invade TBE assets held with new spouse or invade new spouse's interest in a homestead or TBE homestead.	

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ASSET PROTECTION CHECKLIST – Page 2

	BUSINESS AND INVESTMENT CONSIDERATIONS	NOTES		OTHER CONSIDERATIONS	NOTES
3	Separate activities and exposures.		3	Impact on an estate plan.	
4	Leasing arrangements with landlord rent right secured by LLCC-1 on tenant's property.		4	Federal and state criminal law.	
5	Car use.		5	Exposure of the advisor.	
6	Car ownership.		6	Exemptions that apply on death – do not make life insurance or annuities payable to an estate or to a trust that provides that estate obligations must be paid.	
7	Delegate to offshore employees.		7	Client guarantee.	
8	Employee causes of action – make sure they have Workers' Compensation.		8	Confidentiality – use an anonymously owned LLC from Wyoming, Delaware or Colorado to serve as manager of operational LLC's and Trustee of Homestead Land Trust, and file Certificates of Authority in each county where real estate is located.	
9	Separate intellectual property rights.		9	Equity Stripping – debt secured by a mortgage or lien on valuable assets at risk may be payable to arm's-length lenders or related-party lenders under a number of various arrangements.	
10	Alcohol at events.		10	Make your children self-supporting.	
11	Using independent contractors.		11	Get divorced soon, or not at all.	
12	Client/Patient/Supplier Arbitration Agreements.				
13	Consider New Parent F Reorganization to separate assets within a company without triggering capital gains.				
14	Consider factoring accounts receivable to a related company that may be held for descendants.				
15	Trusteed or Partnership/LLC based Buy/Sell Life Insurance Arrangement.				
16	Consider leasing use of equipment on a triple net basis – be sure all activities are insured.				
17	Pension contributions.				

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THE CPA'S CHECKLIST FOR FLORIDA CREDITOR PROTECTION PLANNING AND MAINTENANCE

1. Do the clients know about tenancy by the entireties protection?	
2. Are the clients' assets held as tenants by the entireties? a. Were the right boxes checked when they opened an account? b. Do they have out of state real estate that needs to be placed under a Florida LLC? c. How will the client's fund a bypass trust on the 1st death if everything is owned jointly? – Disclaimer planning. d. Are K-1's being issued to both spouses or to the correct spouse or entity? If a husband and wife own S-Corporation stock or a partnership interest as tenants by the entireties is it proper to be issuing separate K-1's to them for 50% each of the interest? Often the CPA's file is the only place to find documentation on how stock and LLC interests are owned. e. How do stock certificates read? f. What names are on contracts? g. Is property held in a state that allows for tenancy by the entireties? h. Have the clients considered a TBE owned LLC or family limited partnership. i. Do their LLC's have proper operative language?	
3. Is the homestead more than ½ an acre within the city limits or more than 160 acres in the county? Homestead is owned as tenants by the entireties as well?	
4. Do they understand that the cash value of a life insurance policy is only protected when it is owned by the insured individual?	
5. Is life insurance payable to protective trusts that can benefit the surviving spouse and descendants without being subject to their creditor claims? Does the client own life insurance policies on any other person - if so, it will not be creditor protected.	
6. Is there an inherited IRA - inherited IRAs are not protected from creditors under recent Florida case law.	

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7. Who is responsible for making sure that LLCs are properly established and maintained? An improperly drafted LLC will not provide a Florida client with charging order protection or tenancy by the entireties status, even if intended to do so. Many lawyer do not know how to do this properly, so how can accountants and clients themselves even attempt this? Single member LLC's do not have charging order protection. WARNING - It violates the unauthorized practice of law rules to set up LLC's and to provide legal documents for LLC's. This puts the CPA firm at risk for malpractice and licensing purposes.	
8. Do the clients own assets that may cause liability, such as investment real estate, a business or even a charitable activity? Should these be placed in separate LLCs for liability insurance insulation purposes? a. Some clients think that a flow-through tax entity allows creditor claims to flow through, which is not of the case. b. Many clients think that revocable trusts will shield them from creditor claims. There is a big difference between avoiding probate and avoiding creditors. c. Who is the manager? Exposure of the manager? d. Do insurance carriers on agencies know how assets are owned?	
9. Are proper formalities being followed so that one company or person is not considered an alter ego of the other for liability insurance insulation purposes. Are financial statements being prepared? For example, many CPA firms prepare a form 1065 for an entity taxes as disregarded simply to help confirm appropriate fiscal conduct and accountability.	
10. Is the client being realistic about what their risks and exposures are with respect to potential upside down loan situations, guaranties, and real estate debt that may not be renewed. Why do some clients wait until it is too late? A nudge here and there can save significant problems.	
11. How much should the CPA know? Will communications with the CPA and other parties become discoverable? Understand CPA client Florida litigation privilege – copies of letters or information given to third parties will be discoverable.	

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THE CPA'S CHECKLIST FOR FLORIDA CREDITOR PROTECTION PLANNING AND MAINTENANCE

13. Is the client being accurate and truthful on financial statements provided to lending institutions? How specific do these statements need to be on issues such as joint assets and changes thereto. Proper footnoting is crucial.	
14. Are insurance agencies and carriers aware of exactly what is being insured? Is the client telling the insurance carrier that the car is personal and not for business, while telling the IRS that the car is 90% business and is owned by a company? Can someone working for the CPA firm call the applicable insurance agencies to make sure that everything is coordinated? Make sure client understands exclusions, such as animals, pools, civic activities, church or synagogue activities, etc.	
15. What is the client's cash-burn rate? Are they waiting for the economy to turn around, and what if it does not and when do they run out of cash?	
16. Schedule an annual review?	
17. Consider new entities and trusts, including protective trust systems and limited liability entities. Segregate voting from non-voting under entities.	
18. Annual input from and participation with qualified lawyer.	
19. Debt at the Debtor's Best Friend a. Is there one creditor who should be ahead of the others? b. Are all loans documented by promissory notes and secured by mortgages and/or security agreements? c. Review various debt-associated strategies, such as cross-collateralization and sale lease backs.	

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Follow Up Checklist for Presentation Entitled:

Essential Creditor Protection and Retirements Planning Considerations

Presented by: Alan S. Gassman, Esq. - agassman@gassmanpa.com

ITEM	DONE	NEEDS TO BE DONE	NOT SURE	DELEGATE TO
1. Malpractice insurance in place with calendaring for renewal.				
2. Corporate malpractice insurance policy in place or considered.				
3. Nurse practitioners and nurses having separate policies?				
4. Insurance for automobile liability?				
5. Employment agreements in place to document that wages paid to the doctor should be exempt from creditor claims of the doctor.				
6. Does the PA lease real estate from a related entity? Is there a long-term lease agreement in place to insulate the owner entity from accidents on the property?				
7. Does the long-term lease give the landlord entity a UCC-1 field lien against the assets of the medical practice?				
8. Does the medical practice owe money to "friendly creditors" like a bank?				
9. Are the medical practice assets properly pledged as collateral for the loan by filing of UCC-1 financing statements?				
10. Will the practice acquire expensive equipment or other assets that can be held by an entity for the family to not be owned by the practice, or that can be leased in the same manner?				

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Follow Up Checklist for Presentation Entitled:

Essential Creditor Protection and Retirements Planning Considerations
Presented by: Alan S. Gassman, Esq. - agassman@gassmanpa.com

ITEM	DONE	NEEDS TO BE DONE	NOT SURE	DELEGATE TO
11. Are there any loans on buildings, to family members or otherwise, that can be collateralized by medical practice assets, by proper documentation that will normally include a guaranty by the practice entity and a UCC-1 financing statement/security agreement being executed?				
12. Are there employment agreements in place which clearly delineate wages, and are wages being paid and appropriately thereafter saved in creditor protected ways? Are dividends being spent first and wages being saved?				
13. Are there separate medical practice endeavors that should be separated into separate corporations, such as a specialty practice, a weight loss center, and/or a sleep center?				
14. Assure proper ownership configuration to also comply with Florida anti-referral laws.				
15. Do the doctors have non-competition covenants and/or have they given the medical practice patient file rights that might conceivably be enforceable by a creditor?				
16. If a shareholder/physician may have personal creditor problems, is the transferability of entity ownership properly limited, and perhaps pledged as collateral to a "friendly lender?"				
17. Are there Letters of Protection or other significant receivables that should perhaps be factored or otherwise handled in order to be less exposed to potential creditors?				
18. Review materials with advisors for further possible items of follow up?				

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Asset Protection for Physicians and their Practices: The Doctor Is In - - - But Where Is The Tax and Estate Planning? (Part 1 & Part 2)

A LawEasy Webinar Presented by:

Marty Shenkman & Alan Gassman

Friday, February 12, 2020
12:00 – 1:00 p.m. (EST)

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