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## Asset Protection Planning

Whether the concern is frivolous lawsuits, legitimate lawsuits, bankruptcy or any other potential liability concern, more doctors have become interested in asset protection planning in conjunction with their estate planning. In addition to limiting your personal exposure through medical malpractice liability insurance, which is becoming cost prohibitive, asset protection planning will definitely result in a more favorable litigation posture. The time to plan is now. Once the problem occurs, it is too late.



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Asset protection planning should always begin with a review of your current assets and in particular how they are titled. Never begin your planning with the idea that one plan fits all. Each situation is unique and deserves a complete analysis. Federal and state law completely exempt some assets from creditors and either partially exempt or exempt for the joint lifetime of a married couple certain other assets. For example, life insurance, including the cash value and annuities may be exempt from creditors depending on your state's law.

One easy and more common arrangement of your assets is to transfer the assets to your spouse or children. This is a popular plan for doctors and those with concerns over the singular threat of litigation because of a particular vocation or hazardous enterprise. However, many people are not comfortable giving up control of all or most of their assets. It can be hard to recover the assets once

they are given away, and some estate planning opportunities can be lost. Some commentators have also argued that too much continued use and enjoyment of the gifted assets could keep them within the reach of your creditors. Their argument is that if you transfer your residence to your spouse and continue to reside in your home, you have not completely gifted the asset away. This theory is untested to date.

If you wish to maintain a certain amount of control through direct ownership of your assets but have a desire to insulate yourself from creditors, there are numerous other techniques. Family limited partnerships have been a favorite vehicle for estate tax planning for years, and they also provide protection from potential future creditors. A well defined family partnership allows the family to hold the management and control of the partnership through a relatively small general partnership interest. The overwhelming majority of the partnership ownership is represented by limited partnership interest. The Partnership document can be more restrictive as to whom can be a future partner, how the partnership is run and when distributions can occur. The restrictions, if properly drafted, are such that creditors through litigation cannot force the partnership or partners to include the creditor as a partner. The creditors could foreclose on a limited or general partnership interest, but all they will obtain is an assignee interest which entitles them to distributions of the prior owners percentage interest when and if distributions are made. Most litigants would prefer a cash payment for their efforts as opposed to a hope that the managing partner will make a distribution to them as a benefi-

cial owner of your partnership interests they acquired through litigation. In a worst case scenario, a family limited partnership may provide significant leverage to settle with a creditor.

The use of trusts in asset protection planning is also worth exploring. Trusts for children and spouses are wonderful for estate planning, and it is easy for clients to understand that trust assets may be outside the reach of their creditors. Many clients prefer to establish trusts when their children are young to save for their education. Prefunding these educational expenses in a trust should be considered. Should trouble arise in the future, you will not have to worry about your children's college education funds being in jeopardy.

There are also many foreign jurisdictions that recognize trusts that can be created for your benefit as well as others. These trusts are expensive to create, but they have appeal for some clients. These trusts allow an individual to maintain some access to their assets. One downside to these trusts is that a third party has to be named trustee which may leave you a little nervous.

Asset protection planning can be very rewarding once you assess your risk tolerance and your potential liability exposure with the help of your attorney. Successful asset protection planning is achieved when you implement the best technique to achieve your goals.

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