Wild Felice & Pardo, P.A.

July 2010 Volume 1 Issue 7

Protecting What You Value Most Through Estate Planning and Asset Protection

Providing Solutions That Secure and Enhance Your Wealth and Your Legacy

Everyone understands the benefits of having insurance to protect your assets from unanticipated events. Hazard and casualty insurance is necessary to provide protection from the risks of fire, floods and wind damage. Liability insurance is necessary to provide protection from the risks of auto accidents and personal injury. But what can you do to protect your assets from claims in excess of your insurance or from risks of lawsuits or from unexpected business liabilities or from an overabundance of tax consequences? Fortunately having an asset protection plan in place can help insulate you from these potentially significant risks.

We believe in providing you with effective solutions so that you can have confidence that your assets and your legacy are protected. An effective asset protection plan needs to be in place before a lawsuit or claim is made against you, and well in advance of your retirement or death, so it is important to take the step toward greater protection today.

Wild Felice & Pardo is a full-service, Fort Lauderdale, Florida based law firm with a specialty in asset protection. We utilize a combination of estate planning, real estate law, corporate formation, family law, and asset structuring to assure that our clients are protected from potential litigation, creditors, and any other threats that may be looming. A properly designed asset protection plan can accomplish many of your most important objectives:

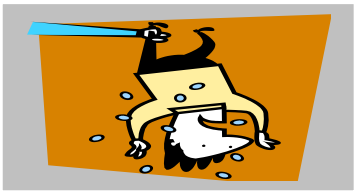
- Protection of family savings and investments from lawsuits and claims.
- Protection against inadequate or unavailable insurance coverage.
- Insulation of rental properties reducing your exposure to potential lawsuits.
- Protection of business assets and accounts receivable from potential claims.
- Elimination of probate.
- Reduction of estate taxes.

Reasons To Avoid The Probate Process

Probate has a number of drawbacks. First and foremost, it is quite costly. The probate of an estate will usually cost between 4 and 7 percent of the value of the entire estate. The lawyers, Court, and creditors will all be paid before your family or beneficiaries see even one cent. Another drawback to probate is that it is very time consuming. The probate of a simple estate can take between 6 and 18 months. Some estates take over 3 years to complete the probate. During this time, your family has no access to the assets in your estate and no ability to sell or manage assets even as they depreciate in value. A third drawback is the embarrassment of your dirty laundry being made public knowledge.

While trusts are completely private and sheltered from everyone's view except for the trustee that you appoint, probate is public record and your will shall be filed with the clerk of courts where anyone with a computer can download it and read it. Even more embarrassing, any fighting over the execution of your will is also public record. That's the reason that the world is currently aware that the head of Hall of Fame baseball player Ted Williams is currently on ice. He did not have a trust.

Another very important drawback of the probate process is that your beneficiaries are not afforded any protection once they inherit your assets. With a trust-based estate plan, you will be able to protect your beneficiaries from anyone attempting to take the assets from them through manipulation, litigation, or divorce. Without a trust, your assets could be taken from your family and enjoyed by a person that you have never even met. Probate is a very real concern and should be avoided at all costs. Luckily, it is easily avoided by simply calling your estate planning attorney and implementing a trust-based estate plan.



Probate can be very expensive and add problems to an already stressful time for your loved ones.

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101 N Pine Island Road, Suite 201
Ft. Lauderdale, FL 33324
954-944-2855 **office** • 954.653.2917 **fax**
info@wfplaw.com
www.wfplaw.com

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Is A Charitable Remainder Trust Right For You?

Many of my clients ask me if they should consider adding a charitable remainder trust (CRT) to their estate plan without actually understanding what it truly is and what it actually accomplishes. There are two types of charitable remainder trusts: a charitable remainder annuity trust (CRAT) and a charitable remainder unitrust (CRUT).

A CRAT is a trust in which a fixed percentage or dollar payment is paid to the Grantor annuitant at least once a year. The annual payment must be no less than 5 percent and no more than 50 percent of the initial fair market value of the trust property. The payment may either be for the lifetime of the beneficiary or for a period of 20 years or less. The payment may not increase or decrease during the term of the trust, nor may additional gifts be made to the trust. Following the death of the annuitant, the remainder is transferred to the charity or is held in trust and distributed for the charity. A typical CRAT would, for example, pay a $5,000 annual payment to the Grantor from an initial one-time gift to the CRAT of $100,000.

A CRUT has the same requirements as the CRAT, except that the annual payment is a fixed percentage that must be reset each year upon the revaluation of the trust property. The annual payment will increase or decrease, depending on the value of the trust assets. A limited exception to this rule is that the Grantor may take the lesser of the trust income or 5 percent of the trust assets. The CRUT also permits additional gifts to be made to the trust. A typical CRUT would pay 5 percent of the fair market value of the trust as determined on December 31 of the prior year, payable in 12 monthly installments. While the percentage would remain the same, the dollar amount received from the CRUT by the Grantor would change each year based on the increase or decrease of the value of the trust assets.

Generally, for either type of trust the remainder must be at least 10 percent of the fair market value of the assets transferred to the trust. Both types of trusts provide income and estate tax benefits for the Grantor. The value of the charity's remainder interest is a deductible charitable contribution on the Grantor's individual income tax return for the year in which the asset is transferred to the trust. Any unused deduction can be carried over for 5 years. If the CRT is established upon the death of the Grantor, it will generate an estate tax deduction for the remainder interest. Pairing the CRT with a large life insurance policy can result in a larger estate passing to the Grantor's beneficiaries than would have been able without the CRT.

CRT's can be very valuable estate planning and tax reducing tools, if implemented correctly. In order to determine if a CRT is right for your situation, you should set up a meeting with your estate planning attorney, your CPA and your life insurance agent. These professionals, along with your financial advisor, will be able to assess your financial situation and get the right plan in place for you. Estate plans are not cookie cutter molds and should not be drafted in a one-size-fits-all manner.

Did you know?

Creating his and her revocable living trusts while you are married is the simplest way to limit or eliminate any estate tax burden your family might face after you are gone.

Most individuals will only receive a $1 million estate tax coupon but by using his and her trusts, we are able to double the "coupon" amount and save your children or beneficiaries over $550,000 in estate tax.

Your Inherited IRA May Not Be Protected

According to Florida Statutes Section 222.21(2)(a), any "money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account" is maintained as an IRA. The same is true for ERISA plans, DROP plans, Pension plans, and annuities. (*Note: Life insurance and homestead investments also provide instant asset protection but are not pertinent to this discussion.)*

In spite of the plain wording of the statute, the Florida Supreme Court recently concluded that Section 222.21(2)(a) doesn't apply to inherited IRAs because they claim that the statute only references the original IRA fund and that inherited IRAs are taxed differently, which renders them completely separate from the original account. The Court's argument is that an inherited IRA is a separate account that is created when the original account passes to a beneficiary after the original owner's death.

While the Court's rationale is that the IRAs tax-exempt status changes because the beneficiary is required to take distributions, the Court forgets the fact that the original owner of the IRA would have been forced to take minimum distributions beginning at age 70½ if he were still alive. The Court clearly missed the boat with this ruling, but that doesn't change the fact that asset protection attorneys must now take this ruling into account when preparing and implementing an asset protection plan.

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Asset Protection Planning

In this depressed economy, every dollar you earn and every asset you own is at risk. Vultures in the form of creditors and litigators are salivating at the thought of a successful individual who has his assets unprotected. If you are making money, you currently have a bull's eye on your back. The only way to protect what you've earned from those that are trying to take it from you is to set up a comprehensive asset protection plan. Thirty percent of potential lawsuits are avoided by the mere presence of an asset protection plan. There are three techniques for protecting your assets. Any one person might utilize one or all of these techniques.

1. The first technique is to remove your name from the ownership of your assets, but not from the control of your assets. You want to be rich but look poor.

One entity that you can transfer your assets into to accomplish this goal is a limited liability company, or LLC. A creditor cannot attach a debt to the membership interest of an LLC. Therefore, the shares you own of any LLC are protected from any creditor liens. The creditor or judgment holder is limited to owning a charging order against any distributions made from the LLC. They will not be able to touch any of the assets in the LLC, nor can they take any money you pay yourself as salary (without an order allowing a garnishment of wages) or any assets purchased or sold in the name of the LLC. As long as you avoid distributions from the LLC, the creditor will have no ability to collect at all.

2. The second technique is to convert your assets into vehicles that are already creditor-exempt. Homestead property, annuities, IRA's, pension plans and life insurance policies are the most common creditor-exempt entities.

For new or existing Florida residents, by far the most convenient vehicle to protect your assets is via the Florida Homestead statute. Any interest acquired in, or value added to, a person's homestead is protected by Florida's homestead exemption. The only creditors that are able to attach a lien to your homestead property are those creditors that hold liens arising out of your property. The three most common liens of this type are mortgage liens, Federal tax liens and mechanic's liens (money owed to someone you hired to do work on your property). Association liens are also of this type.

3. The third technique is to make all of your current assets less attractive to those who might be looking to take them from you.

We do this through a process called equity stripping. Placing liens on assets that are currently unencumbered or have some equity makes the asset appear more like a liability. You don't actually have to go to a bank and take out a loan. Equity stripping doesn't have to cost you any additional money. You can have one of your out-of-state LLC's write a Note for more than your property is worth. When a creditor or litigator looks at your assets, they will see a piece of property that is encumbered by a loan worth more than the asset itself. The property will be "under water" and undesirable to any potential asset vultures.

Asset protection is a necessity in this day and age of "money for nothing" mentality. Fifty million law suits are filed each year. Each of us will be sued 5 times during our lives. Will you brush your lawsuit off without worry or will one of those law suits permanently cripple you and your family financially? The time to plan is now.

Avoiding Conflict When Speaking with Your Spouse or Partner About Your Will

The creation or updating of an estate plan necessitates the contemplation of money, death and extended family. These are topics that can cause fighting in even the strongest of families. To avoid any conflict with your partner or spouse over the planning of your estate, here are a few tips to following when discussing the subject.

Try not to be too critical of your partner's family members.
If you have strong feelings that one particular relative should be left out of your will or you disagree with your partner's choice of South Florida executor, you need to be very diplomatic and describe your position without speaking negatively about the specific relative.

Propose compromises rather than arguing for one side or the other.
There is a greater likelihood of fights occurring when one partner or spouse feels like his or her voice is not being heard by the other. One preemptive solution to this problem is to listen to your partner's positions and look for some kind of middle ground, even if you completely disagree with their decision.

Discuss each of your goals and come up with one primary objective.
What do you and your partner most want your will to accomplish? If you can agree on one primary objective, you will be less likely to bicker over the smaller details.

Remember to continuously use the term "for now."
You and your partner should have your estate plans revised every time there is a change in your family or in the estate tax law. Your will can and will be amended in the future. Reminding your spouse or partner that the decisions made today are not necessarily permanent can remove some of the emotion from the discussion.

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