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Wild Felice & Pardo, P.A.

Volume 1 issue 6

Providing innovative legal solutions for the challenges you face.

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.

Asset Protection For Professionals

If you have a professional license, you may as well wear a sign that says “Please Sue Me.” The general belief of the public is that a profession is very wealthy and highly insured, which leads to an easy payday if they can make a claim that you did something wrong or that the result of something you did correctly was not ideal for them. In this economy, the problem of frivolous lawsuits has grown even worse. About 50 million lawsuits are filed each year; if you earn a dollar, there is someone out there trying to take it from you. Implementing a comprehensive asset protection plan is an absolute necessity.

The first step in the protection of a dental practice is to choose the right form of business entity. You should always choose an entity that limits your personal exposure. After all, if someone is successful in a lawsuit against you as a professional, it should not permit them to recover against assets you own as a spouse or parent. Usually a limited liability company (LLC) will most effectively shield your personal assets from the debts and liabilities of your professional practice. A professional corporation (PC) or professional association (PA) will also offer protection from the debts of your practice and any errors made by any of your employees but it will not personally protect you if you are sued personally for your own malpractice.

The most important step you can take as a professional looking to insulate yourself from any liability arising from your practice and protect your personal assets is to conduct a risk management and liability audit. Business structure, policies, procedures, operations and contracts need to all be reviewed in order to create an airtight asset protection plan. As your asset protection attorney, my job is to identify problems before they turn into lawsuits. The earlier we find a breach in your armor, the more successful we will be in shielding you from any loss. If you wait until you are served with a lawsuit to form your asset protection strategy, it will be too late.

What would happen to your personal assets if someone sued you for your actions as a business owner? It’s a Wild world. Are you protected?

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Trusts: More Than Mere Tax Shelters

Many people incorrectly believe that only millionaires need to implement a Living Trust as a primary component to a foundational estate plan. For any person whose total individual estate exceeds $100,000, a Trust should be created. There are four major advantages to using a Living Trust for your estate planning needs rather than relying completely on a Will.

1 First, all Wills need to be probated. Anything you own at the time of your death will need to be probated. Attorney fees range from three (3) to ten (10) percent of the estate. Personal representatives and executors are also entitled to a fee. Trust assets do not go through probate. Thus you save the attorney's fee and the executor's fee.

2 Another advantage to using a Living Trust is the efficiency with which assets may be devised. Probating a Will usually takes between six (6) months and two (2) years. If an estate tax return is due, probate takes a minimum of one year. I have a client who is entering his fourth year of probate. The entire time, the assets are tied up and cannot be enjoyed by the beneficiaries. Trust assets, on the other hand, may be distributed without attorney or court involvement and therefore can be distributed faster. In many cases, it is as simple as the Trustee providing a copy of the Trust and a Death Certificate in order to access and distribute the assets.

3 A third advantage is control. With a Will, once your assets are distributed to your heirs, you cease to have any control over them. Your beneficiaries may frivolously spend away their inheritance on cars, drugs, alcohol, or worse. Should they be responsible enough to save the money given to them, they still might have it taken away through litigation, divorce, or even creditors. By using a Trust to distribute your assets, a layer of asset protection forms to protect your beneficiaries from losing the assets you devised to them and from anyone else trying to take the assets from them.

4 One other way a Living Trust is superior to a simple Will is privacy. Upon death, Wills are recorded and the public may view or purchase copies of it. The Will is made public record, as is any dispute arising from it, which may provide embarrassment to your family. Trusts do not have to be recorded. If you prefer, no one ever has to know the exact terms of your Trust except for you, your attorney, and the Trustee that you name as the person or entity charged with enforcing the Trust.

Be it the saving of money by avoiding probate costs and the estate tax, saving time by distributing assets quickly, controlling your assets and protecting your family after you are gone, or protecting the privacy of your most intimate and final decisions, a Living Trust is the ideal vehicle for your estate planning needs.

Did you know?

Contrary to popular belief, there is no six-months-and-a-day rule for claiming Florida as your domicile. You can live in Florida for two weeks per year and still make the case that it is your "home state."

Determining whether a client has a possible double The term "domicile" has been defined to mean a person's residence coupled with the intent that the residence be permanent rather than temporary. There is no single definition that provides sufficient criteria to determine domicile in all cases.

The Need For An ILIT

After you die, all the assets you owned in your individual name at the time of your death will be listed on your Federal Estate Tax Return. If the value of your estate is higher than the estate tax threshold for that year, an estate tax will be owed. In 2011, the estate tax threshold will be $1 million and the estate tax will be a whopping 55 (fifty-five) percent.

One approach to providing ready cash to pay these taxes and other expenses is through life insurance proceeds. The proceeds may be paid to the Federal government instead of your heirs having to liquidate assets in order to pay the estate tax bill.

Life insurance provides an income tax free death benefit but the value of the benefit is added to the total of assets in the estate if not structured properly. This creates a never-ending cycle of taxes and insurance policies.

The way to avoid this result, limit or eliminate your estate tax, and provide tax free money to your beneficiaries is to hold the life insurance policies in an Irrevocable Life Insurance Trust, or ILIT.

An ILIT combines the protection a trust with the liquidity of life insurance benefits. Using the $13,000 per year gift tax exclusion, you can gift assets to the ILIT annually to cover the insurance premiums with no tax consequence.

At your death, the proceeds are transferred to your heirs free of all income tax and all estate tax. This will provide the necessary liquidity your heirs will need to pay your funeral costs, estate taxes, probate fees and settlement costs.

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Joint Ownership: The Poor Man's Will

Jointly owned property is probably the least-understood area of estate planning today. Joint tenancy with rights of survivorship means that each joint tenant has a full and Popularly known as "the poor man's will," joint tenancy causes more litigation than any other estate-related problem. Stocks, bonds, bank accounts and real estate are types of property most often held in joint tenancy.

While there are only a few advantages to joint ownership, there are at least seven key disadvantages: inflexibility, unwanted beneficiaries, inexperienced partner, estate-tax issues, income-tax problems, gift-tax issues and family feuds.

Inflexibility: Neither party can give away joint property by means of a will. A will only controls property in an individual's name and does not include property owned jointly. In addition, neither party can sell, rent, or use the property in question without permission of the other party.

Unwanted Beneficiaries: Joint property may pass to someone you don't wish to receive it. In effect, a stranger may inherit your assets. Should you and your partner own a home as joint tenants, if you die and your partner meets another person whom they wish to leave the property to, they can do so with no restriction whatsoever, even if the property was originally yours and it is being donated to a person or organization against your living wishes.

Inexperienced or Incompetent Partner: The surviving partner may not be experienced in money management, or may be physically or mentally disabled. Who will take care of the assets then?

Estate-Tax Troubles: Since all joint property goes to the surviving partner, it will be subject to the estate tax when the surviving partner dies. In unmarried and same-sex relationships, there is no unified estate-tax credit. The family of the surviving partner would be asked to pay the government an amount equal to fifty-five (55) percent of all assets over the estate tax threshold.

Income-Tax Problems: Joint tenancy will create an additional problem if the estate owns any assets that have gone up in value. If the property is passed through a will or trust at death, the cost-basis is "stepped-up" to the value at the time of death so that the beneficiary will not have to pay any capital gains tax. However, a surviving joint tenant would be forced to pay income tax on any increase in value between the time of purchase and the death of the first joint tenant.

Gift-Tax Issues: If you own property in your own name and voluntarily give half of that property to your partner, you will be asked to pay a gift tax on the value of the ½ interest in property you gave to him. Currently, the gift tax is forty-five (45) percent of any gift over $13,000.

Family Feuds: Frequently, an individual who places an asset in joint tenancy later decides that he wants it back. Without the other partner's consent, there is no legal way to transfer the asset back. Should a romantic relationship end, the property will retain the status of owned in joint tenancy.

It should be noted that a comprehensive estate plan centered around a Revocable Living Trust will accomplish the goals of avoiding probate and simplifying the distribution of assets without all of the negatives attached to joint tenancy, as described above. A Revocable Living Trust is the ideal vehicle for protecting those that you love most.

How Jointly Owned Property Is Taxed

All property held by spouses as tenants by the entirety or as joint with right of survivorship will be deemed to be one-half (1/2) owned by each spouse regardless of which spouse furnished the consideration. Thus only one-half (1/2) of such property will be included in the estate of the first spouse to die.

Caution: only one-half (1/2) of the joint property will receive a step up in basis, thereby possibly causing increased capital gains taxation. Regarding jointly owned property by non-spouses, the property will be included in the estate of the first person to die, unless the survivor can prove contribution.

Joint ownership of assets is not ideal during life and poses many problems in the administering of an estate. A better way to manage your assets is through a Revocable Living Trust.

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It's a Wild world! Are you protected?

Everything you have worked for in your life could be wiped out in a matter of hours if you are not protected. Through lawsuits, divorce, bankruptcies, job loss, medical bills, bad business deals, foreclosures, car accidents, slip and fall accidents on a property you own, malpractice claims or any other catastrophe that you can dream up, you can lose everything.

Asset protection is simply the adoption of a number of strategies to title your home, bank accounts, business and other assets in a way that legally shields them against lawsuits and other claims. Prevent even one lawsuit and you will recover the fee you spent to implement the plan many times over. Please call us for a free consultation and let us protect what you value most.

Managing Partners Anthony Felice and Michael Wild