

VOLUME 5 ISSUE 2

# ESTATE PLANNING & ASSET PROTECTION



FEBRUARY 2014: POST VALENTINE'S DAY EDITION

ROSES ARE RED, VIOLETS ARE BLUE. PROTECT WHAT IS YOURS, AND CONTROL IT TOO.  
How to maximize asset protection, without sacrificing control!

MY HEART BEATS FOR YOU ... UNTIL IT DOESN'T  
How to protect your loved ones in the event of sickness or death.

YOU THOUGHT HALF WAS BAD...  
How a divorce can render your old estate plan ineffective!



## WFP

WEALTH FAMILY PROTECTION  
*Attorneys at Law*

WHEN LEGACY MATTERS

At Wild Felice & Partners, we implement estate planning and wealth transfer techniques such as the use of Florida Revocable Trusts and Irrevocable Trusts, Family Limited Partnerships, Limited Liability Companies and other advanced estate planning tools to help our clients avoid probate and limit or eliminate estate tax burdens on family members. We realize that each client is unique and every plan is tailored accordingly to every individual need. Our firm aims to shed the tax attorney paradigm and focus instead on the dynamic relationships between our clients and their loved ones. WFP Law realizes that estate planning is truly for the loved ones that we leave behind

**It's a Wild world. Are you protected?**



*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.

WFP Law 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.

### **It's a Wild world. Are you protected?**



## YOU THOUGHT HALF WAS BAD...

Cupid shot you with the arrow that initiated the beginning of what could only result in blissful marriage. You then execute a will and trust to ensure that your loving spouse will receive **all** of your assets upon your death. Then Valentines day comes around. The flowers die, the chocolate melts, and next thing you know, you're getting a divorce. What now? Pull the arrow out of your chest and revise your estate plan!

There are a variety of life events that can render your estate planning strategies ineffective, and divorce is one of them. This is why it is incredibly important to have your estate plan reviewed to ensure that it is still effective and true to your goals. In fact, if you experience any life event that affects your relationships or distributions, you will want to have your plan reviewed for alterations.

Consider the following:

- **Trust** - Does your trust document make a distribution to your ex-spouse? Is your ex-spouse the trustee over your assets? Do you want to put your home in a trust to avoid homestead, ensuring your ex-spouse does not have control over it in the event that it is passed to minor children?

*Every American should have an estate plan in place but the need for comprehensive estate planning is even greater when you have children.*

- **Last Will & Testament** – are your children's distributions going to be made outright? Are they minors? If so, your ex-spouse will likely be named guardian over the assets, to which he/she will effectively have control.
- **Durable Power of Attorney** - is your ex spouse designated to legally act on your behalf? Some power of attorney documents do not address whether the power terminates upon divorce.
- **Combination Living Will & Designation of Healthcare Surrogate** – Do you want your ex-spouse making healthcare decisions for you?

Your ex-spouse took half of your assets in the divorce settlement, and you thought that was bad! Don't let cupid make you stupid - make sure you revise, revise, revise - protecting what is yours from what is no longer.

### **It's a Wild world. Are you protected?**



## MY HEART BEATS FOR YOU, UNTIL IT DOESN'T...

February is the month of heart shaped chocolates and cards that express how your heart belongs/beats/flutters/etc. for your Valentine. Thus, it's not necessarily an ideal time to be confronted with the grave reminder of how fleeting life can be, and the importance of planning for the unknown. However, for many, such planning is for the benefit of family and loved ones. Although we have little control over our fate, you can ensure that your loved ones are protected in the event of your own sickness or death. The following estate planning documents can be customized to ensure that your loved one's are protected, not only in health, but also in sickness and death.

- **Last Will & Testament** – used to distribute property to beneficiaries (or a trust), specify last wishes, and name guardians for minor children. You can use a **pour over will** that funnels all of your property into the trust, to ensure greater asset protection for your loved ones.
- **Living Trust** – gain control, asset protection, & preclusion of unnecessary taxes; designate a trustworthy (no pun) Trustee. You can further provide that your assets continue in trust for the benefit of your loved ones, providing them greater protection from the claims of others.
- **Durable Power of Attorney** – gain control by designating someone to legally act on your behalf. There are many types of POA's ("power of attorney"), but a "Durable" power of attorney means the power will be in effect even when you become incapacitated. Therefore, ensuring that any important business related decisions can be made in the event that you cannot make them yourself.
- **Living Will & Designation of Healthcare Surrogate** – make important healthcare decisions for yourself in advance. Determine who can access your health records and make medical decisions on your behalf.



## ROSES ARE RED, VIOLETS ARE BLUE PROTECT WHAT IS YOURS, AND CONTROL IT TOO

Once upon a time (cue happily ever after music), there was a Prince who wanted to protect the Princess from his enemies, so he shipped her off to a far away land. ...if you just heard the record scratch to a halt, it's because this is not your story-book-happy-ending. The real storybook version ends with Prince & Princess cozing up in the castle, safe from all the evil step-mother's, witches, and dragons. Whether in the storybooks, or good ol' reality, the happy ending remains the same: you want to protect what is yours, without losing the benefits associated with it. The following plans are among the many strategies that can provide protection from the fire-huffing-dragons, while effectively maintaining control.

### LLC Based Asset Protection Plan:

An LLC allows you to use and control an asset, yet you will not own the asset in your name. Rather, it will be owned by the LLC or LLP. Therefore, by separating your assets into several LLC's, you are safeguarding them from being pulled into a lawsuit brought against you, as they are owned by the LLC.

An LLC is a "Limited Liability Company." It provides the desirable liability features of a corporation, without all of the extra hassle (paperwork, etc). Lets say you have a boat. So you give it a clever and punning name, and put it in an LLC. A judgment against you is not valid against the LLC and the asset it holds (the boat). Furthermore, lets say you have an investment property (a high risk lawsuit property), and a tenant injures themselves on the property, and commences a lawsuit. They can only sue the LLC. Your home and other assets (bank account, etc.) may not be touched, because you do not own the property, thus you are not personally liable. It's like being a stockholder in a corporation.

Due to the fact that there are several requirements to properly forming an LLC, you may want to seek an attorney (that has a thorough understanding of such asset protection) to assist you in ensuring that the LLC is valid; otherwise, your safeguarding efforts will be futile. Also, keep in mind; the timing of the asset transfer cannot be done to actively avoid a present creditor, as it may be considered a "fraudulent conveyance." Therefore, it is important to partake in these asset protection strategies *prior* to any legal or financial problems. The early bird gets the worm - Don't let it be the Vulture!

### Trust Based Asset Protection Plan:

While a living trust is a great tool for estate planning, especially for those who want to avoid probate; it is not as effective in preventing claims of others. An irrevocable trust, on the other hand, allows you to give up "control" for purposes of ownership, in the same way you do with the above LLC. Unlike the living trust, you do not want to name yourself as trustee; rather, you should consider an independent trustee (bank, etc.). You could allow your spouse to be the trustee, but must be certain that they are limited to "ascertainable standards" (where the distributions can only be made for health, education, maintenance, and support." Furthermore, you want to include a spendthrift clause, which allows distributions to be discretionary, rather than mandatory.

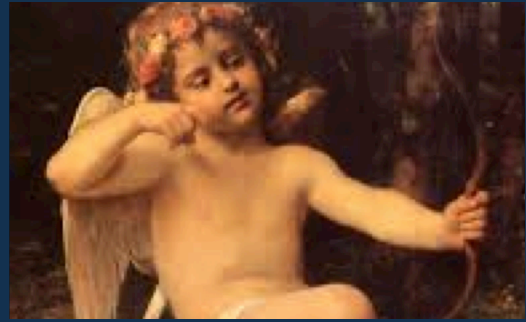
By utilizing estate-planning techniques, you can protect yourself and your family from unnecessary hassles, while safeguarding your assets. With the help of an estate-planning attorney, there are a variety of tools that can be customized to your goals, and implemented to ensure a "happily-ever-after" in *your* storybook.

### What is an ascertainable standard?

Ascertainable standards are designed to balance the power given to the trustee, with the needs of the beneficiary. The ascertainable standards are powers limited to "health, education, maintenance, and support" (also known as "HEMS"). "Support" has been accepted as meaning the kind of support that is consistent with the beneficiaries accustomed manner of living, which allows for a very broad interpretation. "Health" includes "medical, dental, hospital, and nursing expenses" as well as "maintenance in health and reasonable comfort." "Education," on the other hand, is construed more narrowly to encompass college and professional education alone. Thus, ascertainable standards supply the trustee with guidelines regarding the permissible reasons to distribute trust assets to the beneficiary. There is a great importance in including ascertainable standards in trusts that function to remove power from the grantor, trustee, and beneficiary. Without these limited standards, the party exercising the power will be considered to have a general power of appointment; which has a variety of tax-related consequences. Thus, the HEMS standards are incredibly important when seeking to protect your assets in a trust.



## A LITTLE FABLE AT THE COUNCIL TABLE



### IN THE NEXT ISSUE:

#### MARCH MADNESS/LUCK OF THE IRISH

##### LEPRECHAUNS AREN'T THE ONLY MYTHS

Estate planning myths can be quite harmful if not dispelled but we will provide you with that pot of gold at the end of the rainbow.

##### DON'T SPILL YOUR GREEN BEER, BUT DO POUR-OVER YOUR TRUST

Pour-over Wills and Separate Share Trusts are key ingredients in preserving your family's wealth.

##### THE FINAL FOUR ISN'T THE ONLY KEY TO YOUR CHILD'S COLLEGE EDUCATION

Learn about the advantages of an irrevocable trust and how it can play a part in your child's college planning.

Cupid, one sultry summer's noon, tired with play and faint with heat, went into a cool grotto to repose himself. This happened to be the cave of Death. He threw himself carelessly down upon the floor, and his quiver turning upside down, all the arrows fell out and mingled with those of Death, which lay scattered about the place. When he awoke he gathered them up as well as he could; but they were so intermingled that although he knew the proper number to take, he could not rightly distinguish his own. Hence he took up some of the arrows which belonged to Death, and left some of his. This is the reason why that we now and then see the hearts of the old and decrepit transfixed with the bolts of Love; and with great grief and surprise sometimes see youth and beauty smitten with the darts of Death.

*Death & Love strike unexpectedly – be prepared!*

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Michael D. Wild is a Florida attorney specializing in the areas of estate planning and asset protection. For more information on successful Florida estate planning and asset protection techniques, please contact the South Florida law firm of WFP Law at 954-944-2855 or via email at [info@wfplaw.com](mailto:info@wfplaw.com) to schedule your free consultation.

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