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PLANNING MATTERS

What Is Asset Protection?

By James C. Mulder

When people think of asset protection, they usually link it to keeping someone's hard earned assets from being liquidated to pay for a successful creditor who has obtained a judgment against them for some contract dispute, negligence or unpaid debt. Unfortunately, at this stage it is usually too late to do any meaningful asset protection, because the horse has left the barn.

Asset protection is much more than protecting assets from a successful creditor in a lawsuit. It is:

- Knowing what assets you personally own that could be at risk
- Knowing what assets your business owns that could be at risk
- Knowing what business activities in which you are not directly involved that could cause a risk of loss of business assets or personal assets
- Planning to minimize the risk of loss

Asset protection is knowing what income tax effect will ensue from a particular business venture, activity or investment and subsequent sale and planning for the least amount of income tax. Asset protection is knowing what estate tax exposure your loved ones may have upon your death and planning to eliminate or reduce that tax.

Asset protection is knowing that there is a tax called the Generation Skipping Tax that can cost certain beneficiaries of your estate 50% of what you thought you were leaving them and then planning to minimize or eliminate that tax risk.

Asset protection can involve planning for an elderly couple's possible need for nursing home care. They want to protect as much of their assets for the spouse that can stay home while allowing for the government to assist in paying for the cost of a nursing home for the spouse that can no longer stay in the home.

Asset protection is planning to keep your children's inheritance that you intend to leave them protected from a divorce, mismanagement, or loss to a judgment creditor or bankruptcy.

Asset protection is planning to stretch your IRA out as long as possible to maximize tax deferred growth and minimize income tax on withdrawal.

Asset protection involves planning first. Planning includes discussing all of the issues presented above and determining which, if any, of them cause you to sleep less at night or worry you.

Once we have determined what risks you are most concerned with, then we can develop a plan that will, if implemented properly, give you peace of mind and a freedom to do things that you were reluctant to do before because of your risks.

Once a plan is developed it needs to be implemented with legal structures such as business organizations, trusts and contracts. Once the legal structures are created they need to be properly funded and then accounted for thereafter. This involves coordination with attorneys and accountants. The last ingredient is to monitor the proper operation and tax reporting of the legal structures implemented.

This article has been a brief overview of some of the most common asset protection issues we see.

James C. Mulder has over thirty years of experience in Wealth Transfer, Tax and Asset Protection planning. He is Board Certified in Estate Planning & Probate Law and in Tax Law by the Texas Board of Legal Specialization.

One of only a few attorneys in the Houston area Board certified in both Estate Planning & Probate Law and in Tax Law, Mr. Mulder concentrates his practice primarily in wealth transfer, tax, and asset protection planning.

The implementation of such planning includes very comprehensive planning and may involve the preparation of very comprehensive wills, trusts, business organizations and family partnerships. Mr. Mulder has prepared over 1,000 asset protection plans. Mr. Mulder is a frequent speaker on estate planning and on asset protection planning.