

Which Asset-Protection Strategies Are Right for Your Clients?

How You Can Keep Claims From Threatening Their Property

(Content provided by the Wealth Counsel;
reviewed and edited by James W. Grrett, Esq.)

Most of us do not expect to be sued. However, lawsuits are filed every day the courthouses are open. If your clients' estate plans don't include adequate asset protection, the clients could end up losing a substantial amount of their wealth in the event of a claim - even a "frivolous" one.

It's well worth talking to your clients about what asset-protection strategies their current plans include. Many existing plans may need a revamp, while other clients will need to implement a new plan entirely. Shielding their assets and property against legal claims takes sophisticated planning and teamwork. We're here to help you develop a tailored asset-protection strategy for each of your clients.

Several issues and strategies merit examination in asset- protection conversations with your clients.

- **Tenants by the Entirety (TBE):** Your married clients with joint accounts should retitle their accounts from "joint ownership" to "Tenants by the Entirety" (TBE). TBE is a type of joint ownership that only married co-owners can enjoy. Although TBE is commonly used with real estate, it is seldom used for financial accounts. Under Virginia law, an asset titled TBE is protected from the creditors of either one of the spouses. This means that if the debt or liability arises from the actions of only one of the spouses, the entire account/asset is protected for the benefit of the "innocent" spouse.
- **Domestic Self-Settled Asset Protection Trust (DAPT):** DAPTs can protect your clients from a legal claim that may arise in the future by allowing them to place their assets in a special trust that protects them from the reach of a creditor. Although DAPTs aren't available in every state, they are available in Virginia. DAPTs are a sophisticated strategy that's not right for everyone. But, for the right clients, they are a potent tool for protecting assets. Like any sophisticated legal and financial strategy, it's best to work with a team.

Planning Tip: Another option is an offshore asset protection trust established under foreign laws. However, placing your clients' assets out of the U.S. adds significant tax reporting burdens. Also, court orders for asset repatriation can lead to a client being held in contempt of court. Because of the ongoing tax compliance, fiduciary fees, and overall complexity of these foreign trusts, offshore planning is usually not an attractive option for most clients.

- **Lifetime Trusts:** Lifetime trusts protect your clients' beneficiaries' inheritances. Think of this tactic as asset protection for the next generation. Although it does not provide any asset protection benefit for your current clients, these trusts can secure the financial well-being of their children after they're gone. Additionally, assets left in lifetime trusts need long-term management, providing you a valuable opportunity to be introduced to and work with the next generation.
- **Inheritor's Trusts:** Inheritor's trusts are an excellent choice for clients who expect to receive an inheritance. Rather than acquire assets outright or through a less-than-ideal trust set up by their family (usually parents or grandparents), your clients can strategically secure their inheritances with this type of trust. These trusts work best when they are coordinated with the client's overall plan. Any client - especially well-off ones - expecting a large inheritance should consider this option.
- **Retirement Plan Trusts:** Inherited retirement plan assets do not enjoy asset protection from the beneficiary's creditors. This is what the U. S. Supreme Court ruled in the 2014 case, Rameker v. Clark. Our firm has helped many clients establish special stand-alone Retirement Plan Trusts designed to give the beneficiary income tax stretch-out and asset protection. Your clients with sizable retirement plan assets need to be made aware of this ruling, and advised on their options.
- **Risk-Management Planning:** Setting up a Virginia Business Trust, a corporation, LLC, limited partnership, buying appropriate insurance, negotiating contracts effectively, using retirement plans and other exempt accounts, and other strategies are all part of what we could call risk-management planning. Some of these may be built into your clients' estate plans while others may be part of your client's business plans. Many clients have not taken the time to develop a

risk management strategy fully, but it is well worth the effort since many of these strategies are “low hanging” fruit, especially compared to more sophisticated strategies like DAPTs.

No matter what kind of asset-protection strategies you help your clients implement, make sure they don't sleep on it. Planning of this type should not be delayed or neglected. Effective strategies like these only protect your clients when they're put into place early enough — well ahead of a lawsuit, credit claim, or bankruptcy. For clients who have already implemented one or more strategies, it is also a great time to review and ensure the plan will work as expected. Many trusts - even “irrevocable” ones - can be modernized (and their benefits possibly enhanced) using tools like a modification or decanting.

Of course, the traditional concerns of estate planning, such as client privacy, freedom to determine who will be in charge of assets, and reduction of income and estate taxes, must be addressed. Asset protection lets you improve your value to clients by enhancing client control over their property.

Planning tip: The Tax Cuts and Jobs Act of 2017 also impacts your clients' asset-protection needs. Far fewer individuals and married couples will have to pay inheritance taxes because of it. However, it also means that lawsuits — even “frivolous” ones — can still spell trouble for your clients. Bankruptcy and divorce can also come into play here, so protective planning to protect and preserve assets is extremely important, even as estate taxes have receded in importance.

We're here to help you and your clients.

Your clients trust that you have the expertise to guide them toward their financial goals, and that often means pulling an estate planner into the conversation as part of their team of experts. Give us a call today to chat about how we can build asset protection into your clients' plans.