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The Wolf at the Door

Introduction to a Time of Coronavirus

The world has changed.

As of early April 2020, over 90% of Americans remain under "safer at home" orders while hundreds of thousands fight COVID-19 and thousands more die. We're all wearing masks, going through Lysol at alarming rates, and homeschooling our children. We're hoping against hope that our favorite local eatery will someday reopen, that we'll be able to visit the beach, that we'll be able to attend our child's long-planned wedding. We're praying for friends and family struggling through the illness, and in some cases, grieving for the death of a loved one. While decades-old businesses shutter and many factories close or repurpose, millions of workers apply for unemployment after being laid off or furloughed.

This dire look at our current reality is reminiscent of a cautionary childhood fairy tale…

> *Once upon a time, a scourge ravages the countryside, killing all those in its path who lack the stamina to fight. With no farmers tending to flock or field, wolves test new boundaries, creeping into once populous areas. Their howls punctuate the night, getting closer and closer, until at last, there is a scratching, scratching, scratching at the door.*

That scratching at the door could be our faltering economy: a hungry wolf, looking for an opening to exploit and feed on our hard-earned wealth in a time of national need. After all, society as we know it – at least for the near future – will remain profoundly affected by this tiny virus, as its effects wreak havoc in our society for years to come.

While the United States – and indeed the world – has weathered tougher times, especially in less connected eras, the present cash crunch, financial devastation, and social disorder is unprecedented in our generation. This poses significant challenges to both businesses and individuals needing to navigate this storm, as well as challenges for their advisors, who deeply care about their clients' well-being and the long-term viability of their businesses.

Decisions made from this terrible financial tsunami today will likely lead to years of litigation, including tens of thousands of bankruptcies and countless horror stories. But there are steps we can take now to mitigate potential significant personal and business losses – losses that need not to have happened but for misinformed or unfortunate decisions actions or inactions.

We don't possess a crystal ball and cannot predict the future. **But, we can prepare for it.** The purpose of this white paper is to do just that. Whether you are an individual worried about the economy, or a professional advising others, the information in this paper – while not constituting legal advice – should give you enough knowledge to ask well-informed questions of your advisors, colleagues and family members as you prepare for uncertain times. We encourage advisors and clients to go beyond the initial informational and typically dangerous thirty-minute phone call, as these quick calls rarely provide advisors with a full picture of any situation. Steady thoughtfulness, a working through of each and every issue, and the willingness to call in specialists when needed – both legal and financial –should be our collective goal. Clients do not always know when or what type of advice is needed, so advisors should proactively reach out to have frank discussions about how the current reality affects their clients, and clients shouldn't be hesitant to reach out to their advisors for such advice, as early as practicably possible.

We are all feeling a "loss of control" as we watch the markets with trepidation, hoping that the wild swings are temporary and their negative effects short-term. Our businesses have been forced to operate remotely, with varying degrees of success and employee buy-in. Our families are ordered to distance, keeping loved ones away from each other – in many cases, especially with the elderly – isolated and alone.

But in daily work and life, bright points of light lift spirits and hearten even those most affected by this pernicious disease. Neighbors shop for the elderly, health care workers put themselves at risk to treat those most vulnerable, and businesses repurpose to provide much needed supplies. These examples serve as a reminder that there are steps we can take to mitigate the negative, long-term economic effects of our current reality.

We can do the same for our individual estates and businesses. Smart planning must occur prior to disaster to mitigate the potential damage of worst-case scenarios. Things like conserving cash to lengthen your runway, mitigating risk by avoiding activities that could harm a future creditor proceeding against you, and taking advantage of once-in-a-lifetime opportunities for asset protection planning afforded by new federal and state laws will all be examined in this white paper.

Like a burning torch, the following steps can keep at bay "the wolf at the door," while we all plan for the worst, but hope for the best.

Effects on Our Economy

It's difficult – if not impossible – to determine the effect of the coronavirus lockdown on our nation's (and the world's) overall economy while we're in the middle of it.

The news changes every day. Markets experience wild swings, from the Dow losing 12.9% on March 16, which was the worst crash since 1987, to gaining 11.4% on March 24 – just over a week later – in what was the largest single-day point gain in history and the largest percentage increase since 1933[1].

While the markets continue to bounce depending on the daily news from Washington D.C. and our own individual states, other market indicators present a more sobering picture. All fifty states are on some version of their own "safer at home" order, with non-essential businesses either closed or operating from home. Meanwhile, entire industries remain offline, while nearly 17 million Americans filed for unemployment benefits in just three weeks. Family businesses, which account for over 63% of the country's workforce and 57% of GDP[2], will be most affected, with many unable to weather more than a short-term downturn due to tight margins and an uncertain customer base. Businesses as diverse as animal boarding, fine paper boutiques and donut shops shutter[3], and it's predicted that 30% of all California restaurants could close – permanently[4].

Uncertainty about when social distancing restrictions will lift and to what extent, coupled concern over the long-term effects on industries like live events, entertainment, sports, travel, recreation, and restaurants continue to paint an uncertain future. The news has been filled with announcements from financially stable companies taking steps to reduce costs. From deep executive pay cuts to furloughs of entire workforces, very few companies remain unaffected. Even behemoth companies like Disney are laying off thousands of workers and reducing executive pay in the face of park and movie theatre closures "until further notice."

Companies scour their expenses, looking for places to cut, from reducing executive salaries to eliminating travel and trade shows, from reducing software subscriptions to eliminating contractors, and from reevaluating business models and ceasing M&A to reducing spend in R&D, marketing, PR and advertising.

As individuals, should we be making the same types of difficult decisions? Should we be reducing our spend and reevaluating our personal, daily business models? Chance favors the prepared mind, so the natural answer is of course, "yes." But even with the most conservative of approaches, some of us will thrive, while others will fail. Without knowing which bucket you and your business falls into, how can you best prepare for the unknown? How can you survive?

Preparing for the Wolves at the Door

The key to survival comes with doses of common sense coupled with unique strategic knowledge. The following sections will outline some steps you and your advisors can take right now to mitigate disaster.

1.) Hold on to Cash

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[1] Statista.com (https://www.statista.com/chart/21231/daily-changes-in-the-dow-jones-industrial-average/).
[2] https://www.familybusinessmagazine.com/opinion-family-business-and-coronavirus-fears
[3] https://www.forbes.com/sites/nextavenue/2020/03/23/how-the-coronavirus-is-impacting-small-business-owners/#43199cfe473a
[4] https://www.usatoday.com/story/money/2020/03/27/coronavirus-california-restaurants-say-30-close-without-state-aid/2931881001/

Murphy's Law states that "if anything can go wrong, it will, and at the worst possible moment."

In times like these, it is important to "keep the powder dry," in other words, hold on your cash. This will not only lengthen your runway; it will also help you more effectively deal with unexpected bad news. A little cushion can go a long way in the midst of disaster, and money spent in the next four to eight weeks may wipe out businesses and professional practices that would have otherwise survived for several months or years if they had not used their precious powder naively in the beginning of the crisis.

Our experience from 2008 is that many clients who own and operate businesses fail to fully appreciate the dangers facing them, leading to complacency in taking necessary – and early – steps to save their businesses and investments.

Entrepreneurs view their businesses as beloved family members, and a business's failure (or potential failure) is like living through the death of a loved one. Once issues arise, business owners often go through the five stages of grief -- denial, anger, bargaining, depression – and finally – acceptance. The problem is that entrepreneurs cannot act to mitigate problems until accepting that problems do indeed exist.

Owners overwhelmed with anxiety tend to compartmentalize and go for fractional "wins," often leading to compounding issues. In this bargaining phase, many continue to burn through cash or credit in the hopes that their stop-gap solutions will work, but by the time they accept the situation, it's too late. They have burned through their runway before they can even start planning to weather the storm. Entrepreneurs would do well to remember that the five stages of grief have their place, but they must look at facts – early acceptance of those facts, and a willingness to account for them in their decision-making can mean success or failure.

Some strategies to employ in conserving cash include the following:

a.) Perform an "Asset Protection Stress Test" as soon as possible.

This will help you determine what assets would be absolutely protected from creditors versus what would potentially be exposed. The goal is to spend what is exposed and save what is protected.

A stress test entails reviewing all your expenses and liabilities and walking through a worst-case scenario with experienced advisors. Determine if and when to make payments on bills and debts, if and when to terminate, furlough or reduce employee or contractor hours and compensation, and if and when to risk going into default on mortgages, leases, and contracts. An experienced advisor can review related contracts and help you determine which obligations have some payment leeway and which don't.

b.) Spend What is Exposed, Save What is Protected

There are several instances that can be applied against this type of spend vs. save analysis.

For example, in California, under the California Wage Statute, the 9th Circuit Court of Appeals has held that wages paid by a company to its working owner are protected. It helps to have a written employment agreement outlining the wages to be paid, assuring that wages are paid in equal amounts for each pay period, and that such payments are in fact paid as wages. Therefore, if you earn wages that would be protected from creditors under the state wage statute, then such monies can be moved into a variable annuity, a cash value life insurance policy, a homestead, or even a tenancy by the entireties account. Note that this type of activity would not be viewed as a "fraudulent transfer" (more on that later) because transferring one protected asset to another protected asset class is not normally considered a transfer that can be set aside by creditors. The California Wage Statute protects the self-employed business owner, as well as those with medical and professional practices.

c.) Cut Personal Spending

There has never been a more appropriate time to discuss lifestyle.

Many studies have shown that while happiness and contentment increase with income up to a certain point (studies vary, but the number is probably around a surprisingly low $135,000 per year per family), higher income and additional material wealth doesn't necessarily correlate with happier and more content families.

Finance 101 states that you should never spend more than you have. While many Americans are "hooked" on high standards of living, lavish lifestyles can realistically be easily adjusted in leaner times to include only "needs" and limit "wants." Drinking expensive wine, eating gourmet foods, fueling boats and airplanes, and shopping for expensive designer clothes are far from "necessary" activities from a practical standpoint. It may be time to stop and reexamine spending patterns, taking care to honestly evaluate whether you can live your life without that $300 bottle of wine or pair of designer shoes.

Breaking spending habits is not easy. After all, they're "habits," and we're programmed by the television we watch, the news we consume, and the magazines we read to "buy, buy, buy." To that end, there are several resources that may help modify your mindset and better understand how – and why – we spend:

- Professor Srikumar Rao's book *Happiness at Work*, as well as his TED Talk entitled *Plug Into Your Hard-Wired Happiness*[5] are fantastic and eye-opening looks at why we believe that we need money – and significant worldly possessions – in order to be happy.

[5] https://www.ted.com/talks/srikumar_rao_plug_into_your_hard_wired_happiness?language=en

- Professor Jean Kilbourne's excellent and revealing presentation *Killing Us Softly*[6], which has helped many families stop rampant spending; and

- Professor Sut Jhally's YouTube videos *Advertising and the Perfect Storm*[7] and *Advertising and the End of the World*[8], both of which can be viewed on YouTube, and illustrate how advertising and the media affects our spending behavior.

If you're having difficulty with the idea of limiting spending, please take a few hours to watch these informational videos and evaluate your own ideas about appropriate spending.

d. Reconsider Housing Investments

Over the last fifty years, housing needs have changed due to lifestyle changes in our society. Many in the "sandwich generation" care for both their aging parents and their young children, often all live under one roof. With more businesses requiring 24/7 responsiveness, many working parents struggle to find a private place in their own home in which they can work. This has led to the building of larger houses with larger mortgages – sometimes a necessity – but often, as parents move to nursing homes and children grow up, the result is underutilized space. Ask yourself, could you live without that extra space? Could you realistically downsize?

It's important to note that a "medium-sized home" in a given area may increase in value by 3.5% a year, but it's also getting older every year. Assuming a 65-year life, a house loses 1165th of its structure value per year, not to mention the need to pay taxes, insurance, utilities, and invest in upkeep like a new roof and new air conditioning. You might be surprised to learn that many families believe their home has been a very good investment – until they run the numbers. There are times where investing that cash in a conservative, well-allocated stock and bond-based portfolio (which can be creditor protected by being held in tenancy by the entireties if one spouse is high risk), or under variable annuities (that offer both tax deferral and creditor protection), or under pension accounts, or in 529 college savings plans, etc., might have been better financial choices over the long term, especially in situations where conserving cash is paramount.

Given this reality, if your vacation home's value may be needed to pay for expenses or to save or restart a business, consider selling sooner rather than later. Remember that the value of vacation homes may plummet when this virus crisis thaws.

e. Sell Your Toys

[6] https://www.youtube.com/watch?v=pk4Va3RywVI
[7] https://www.youtube.com/watch?v=WNy9s5qR4i0
[8] https://www.youtube.com/watch?v=Rb_d_VxoeyY

We love our toys. They are markers of our success and give us pleasure in their use and possession. Whether our toy is a classic car, a yacht, or a private jet, now is the time to get realistic about "needs" versus "wants," and sell what we don't currently need.

Again, we don't have a crystal ball about how our economy will react to this crisis over the next several months – let alone years; however, one can probably safely guess that these types of expensive "toys" might likely be sold post-coronavirus at 75% or less of their pre-coronavirus value. A smart strategy is to sell now and take the 25% loss rather than hold onto such assets while values continue to plummet, and then be forced to sell at 35% of pre-coronavirus value when there are no other options. This happened over and over during the Great Recession. Human nature is endlessly optimistic. We believe that our most precious investments will someday recover their value – and over the long term, that might be true. But that won't help you save your business in the short term. Take today's value of such investments and consider selling, thereby converting that investment to cash or other investment classes. The last thing you ever want to tell your kids is they have to drop out of college because you couldn't live without your boat.

f. Revaluate Leveraged Investment Real Estate Strategy

Leveraged real estate, such as commercial or residential rentals and apartment buildings may or may not be upside down once the virus lockdown defrosts.

It's important to note that after 2008, when banks reappraised real estate, they gave under-water borrowers some choices: 1.) increase equity by paying down the loan; 2.) give additional collateral; or 3.) have the loan called in if the borrower failed to find a new lender. While the new federal CARES Act may provide landlords some help so they can borrow money to retain employees and pay mortgage interest and certain other expenses, the stop-gap measures will fall short of keeping landlords afloat for the time it may take to recover from this uncertain economic turmoil.

Evaluate your worst-case scenarios. What happens if your tenants refuse to pay rent, or if tenants leave and you are unable to find new ones? How will you pay your mortgages on these types of properties over the long term?

The best way to address this question is to determine what other assets you can safely take off the table. If your mortgagor asks for refinancing or a substantial pay down, the goal is to have assets exempt from creditor claims so you can avoid using them in such cases. If your creditor exempt assets were acquired before there was a high risk of insolvency, and for good tax, estate planning and business reasons, this will be a sound strategy.

Another potential strategy revolves around a separate LISI newsletter in progress to discuss making an S election for LLC's and other entities that are taxed as partnerships or disregarded. If this can be done without triggering income tax, loan workouts and foreclosures are less likely to result in taxable income on LLC owners from the discharge of indebtedness, avoiding additional economic burden if leveraged real estate falters.

2.) Protect What's Owed

a. Collect Accounts Receivable and Outstanding Debts

Don't leave money on the table. Audit your financial records and ensure that all outstanding accounts receivable and other outstanding debts have been collected.

If not already in place, you may need to develop new, online systems to reach vendors, clients and customers that will effectively communicate the outstanding payments owed to you and allow them to pay online via credit card, bank wire, ACH transfer, PayPal or Venmo.

If clients are having difficulty paying, don't be afraid to work with them to discover mutually agreeable solutions. Gaining permission to charge a monthly fee via credit card may be more beneficial to your cash flow requirements over the long term than receiving a lump sum payout now. Also, understand that needed services can also be used to leverage payment. It's not always ideal, but it is acceptable to let a client or vendor know that you're unable to deliver further work until past bills are paid.

b. File Proper Liens on Debts

In some cases, it may be appropriate and necessary to file a lien against debt. It is crucial to file proper liens without delay. Failure to file proper liens more than one year before the filing of a bankruptcy or state court creditor action could be catastrophic for a creditor trying to collect monies owed.

Additionally, if your business or investment entity benefitted from a loans or advance from shareholders or related parties, ensure such transactions are documented with appropriate promissory notes and secured by liens properly recorded against real estate (as mortgages), against tangible/intangible non-real estate assets (by Uniform Commercial Code UCC-1 filings), and against any valuable automobiles or other motor vehicles that would be liened by proper registration with the applicable State Division of Motor Vehicles (or the U.S. Coast Guard with respect to large boats).

3.) Take Advantage of New Federal/State Programs

New laws such as the Families First Coronavirus Response Act (FFCRA) requires certain employers to provide employees with paid sick leave or expanded family and medical leave for specified reasons related to COVID-19, and may give employers some payroll tax relief when covering employee leave.

Additionally, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress on March 27th, 2020. The goal of this $2 trillion economic relief package is to protect the American people from the public health and economic impacts of COVID-19, and to provide "*fast and direct* economic assistance for American workers, families, and small businesses, and preserve jobs for our American industries[9]." The CARES act may allow you to protect your payroll through an SBA loan, which may be forgiven if you keep employees on payroll.

To learn more about these programs, reach out to your tax or legal employment professionals, research the many internet articles and webinars that have been published, or call your bank. Do not delay if you're considering applying for an SBA loan, as Congress authorized a limited amount, and many banks are already approving applications.

4.) Mitigate Risk

Risk mitigation is a strategy to prepare for and lessen the effects of threats when faced with disaster. Rather than planning to avoid the risk, mitigation deals with the aftermath of a disaster and the steps that can be taken prior to the event occurring to reduce adverse, and potentially long-term, effects[10].

There are several steps to risk mitigation. First, you must identify risks to your business and livelihood, including known threats and suspected vulnerabilities. Next, you must perform a risk assessment, honestly determining the likelihood of occurrence of the risks you've identified. Once you have identified all your potential risks, you must determine your priority of mitigation, from the most dangerous risks to the least. Then, you must carefully track the danger, constantly evaluating its potential impact on you and your business. Finally, you must implement your risk mitigation plan and monitor its progress, allowing for adjustments when necessary.

A great example of this process can be found with Disney's actions around the coronavirus lockdown. The company identified its theme parks as high-risk with coronavirus exposure. They knew this was a risk because in years past, cases of measles transmissions had been traced back to the parks. Disney also understands that social distancing is impossible in crowded theme park lines. The likelihood of coronavirus transmission would have been high in such situations. Therefore, Disney decided to close the parks as part of its risk mitigation program. Despite the fact that this decision could negatively affect Disney's stock value, the company decided to continue to pay thousands of employees during their initial closure, understanding their employees also faced day-to-day issues like paying rent and medical bills. Disney continued to evaluate their risk and monitor progress; however, the expense of park payroll coupled with an uncertain timeline to reopen led Disney to furlough that work force in an adjustment to their risk mitigation plans.

All businesses and individuals should go through similar steps in their planning for the future, both short- and long-term.

[9] https://home.treasury.gov/policy-issues/cares
[10] https://searchdisasterrecovery.techtarget.com/definition/risk-mitigation

Happily, many forms of risk mitigation lie in states that have "creditor exemption" laws. These can assist in risk mitigation against creditors for debtors seeking to relieve debt both in and out of bankruptcy, which help debtors with a fresh start in times of financial calamity. For example, California, a rather unfavorable state for judgement debtors, favors protections for retirement plans. California has the Private Retirement Plan complete exemption (other than a "means" test for IRAs) under CCP 704.115 for a Private Retirement Plan, which includes ERISA qualified and non-ERISA qualified plans. This allows a California resident to supplement their ERISA qualified retirement plan with a non-ERISA qualified plan to augment retirement income. Since CA has opted out of the application of Federal bankruptcy law, Private Retirement Plans are exempt from creditors – even in bankruptcy.

When seeking to mitigate risk, be aware that there are many pitfalls one can easily fall into without proper professional advice. Taking complete advantage of available laws to put you in the best position against potential creditors requires careful planning years prior to a potential bankruptcy being filed. Seek the help of a professional to avoid pitfalls that could cause dire consequences.

<u>The Wolves Got In – Now What?</u>

Sometimes, no matter what you do, no matter how much you prepare and plan, disaster is unavoidable. In cases where there are no other further options, bankruptcy – as scary as it might sound – could be a viable choice.

1.) Purpose of Bankruptcy

Bankruptcy law serves three purposes: 1.) to provide an honest but overburdened debtor with a "fresh start;" 2.) to provide for the equal treatment of creditors; and 3.) to preserve the going-concern value of companies in financial distress by reorganizing rather than liquidating.

The concept behind bankruptcy is simple. For those who follow the rules, it can cancel debts through a court order known as the "discharge." Bankruptcy allows you to pay your creditors a portion of what they are owed, depending on what you can pay. After bankruptcy, the discharge prevents your creditors from trying to collect the remainder of what you owe. This process can give the deeply indebted a way out – indeed, a fresh start.

It's important to note that you may not have to file for bankruptcy to open negotiations with creditors. In fact, the mere threat of bankruptcy may cause a creditor to negotiate, taking into account how they might fare in a bankruptcy proceeding. However, when all else fails, bankruptcy may be the only option.

2.) Types of Bankruptcy: A Primer

There are several different types of bankruptcy, and each has its own application and strategy. As you read the below definitions, it's important to note potential strategies that may apply in your case. Note that these definitions should be used as primers, and if you need to consider bankruptcy, you should talk about all your options in light of your specific situation with a professional bankruptcy lawyer.

a. Chapter 7 Bankruptcy

In an individual Chapter 7 Bankruptcy, all pre-bankruptcy debts may be eliminated – or “discharged” – while exempt assets are retained by the debtor, as long as certain requirements are met (more on that below). Businesses may be sold at arm's-length to related parties in court approved sales, and no payment plans are required if the debt is mostly "business debt," as opposed to being mostly “consumer debt.” An independent trustee may also be appointed to liquidate a debtor’s non-protected assets. Chapter 7 Bankruptcy will be a viable option for most many debtors, and further discussion of the implications are below.

b. Chapter 11 Bankruptcy

Chapter 11 Bankruptcy typically applies to a reorganization of businesses, investment entities, and individuals with large amounts of indebtedness or who otherwise do not qualify for a Chapter 13 Bankruptcy.

Note that the CARES Act raised the amount of debt that a small business debtor can have while filing a Chapter 11 Bankruptcy to $7,500,000, and changes in Chapter 11 laws occurred in both 2019 and 2020, which necessitate a more detailed discussion below.

c. Prepackaged Chapter 11 Bankruptcy

This type of Chapter 11 Bankruptcy applies when there is an advance agreement between the debtor and a sufficient number of creditors to allow for debt to be reduced and/or paid over time in a bankruptcy proceeding in order to avoid federal income tax on debt discharge or adjustment. State law documentary, intangible and other transfer taxes may not apply when transitions and transactions occur in bankruptcy.

d. Chapter 13 Bankruptcy

Chapter 13 Bankruptcy is only available to individuals. Corporations or other types of business entities do not qualify.

The purpose of Chapter 13 Bankruptcy is to enact a payment plan for an individual debtor who meets certain requirements to adjust their debts under payment plan rules. Chapter 13 typically applies when a debtor has amassed consumer debt, and usually results in a three- to five-year payment plan which is funded by the debtor’s disposable income.

To be eligible for Chapter 13 in 2020, an individual (or married couple) must have unsecured debt of less than $419,275 and secured debt of less than $1,257,850. Once a payment plan is approved by the court, a Chapter 13 trustee receives and administers payments. If the debtor complies with the Chapter 13 plan, he or she can retain his or her assets and receive a discharge of all debts when all payments have been made.

5.) Definitions in Bankruptcy

Bankruptcy law is often confusing and overwhelming, especially for debtors under the stress and uncertainty of making a filing. A simple list of frequently used words and their definitions may be helpful in easing anxiety.

a. The Bankruptcy Estate

This refers to non-exempt assets of a debtor – in other words, assets not immune from creditors under state or Bankruptcy law – that become property of the "bankruptcy estate," which then places them under the control of the bankruptcy trustee or the debtor in possession, pursuant to 11 U.S.C. § 541.

For example, an individual filing for bankruptcy who owns a creditor-exempt annuity contract and a (non-creditor exempt) bank account will retain ownership of the annuity, but lose the bank account, as it will become part of the bankruptcy estate. Assets in the bankruptcy estate may be used to pay off creditors.

b. Discharge (Plus Fiduciary Duty Concerns and Assignments for the Benefit of Creditors)

A "discharge" is the actual order that results in debt being cancelled under a Chapter 7 Bankruptcy, or upon completion of a successful Chapter 11 or Chapter 13 Bankruptcy plan.

It's important to note that there are certain liabilities that generally cannot be discharged in bankruptcy. These include government backed federal student loans, trust fund tax liability, hazardous waste liability, breach of fiduciary duty liability, child support and alimony, Medicare penalty refunds, and Medicaid penalty refunds, to name a few. Also, liabilities generally not covered by insurance such as civil rights violations committed by employees or others, environmental liabilities, criminal acts, charitable and religious board activities, and acts of terrorism are generally not dischargeable in bankruptcy proceedings. Avoid conduct that causes such liabilities and consider paying them first if they arise.

Surprisingly, corporations and other non-individual entities such as partnerships, are not issued discharges under the bankruptcy code. In fact, many corporations will enter into Chapter 7 Bankruptcy proceedings without realizing that there will be no discharge of debt. However, there is a sound strategy for doing so: filing a corporation's Chapter 7 first (prior to any other types of filings) may relieve the officers and directors of the entity from being bound to state law that may force upon them the responsibility of properly administering assets and situations for the benefit of creditors. Remember, the officer or director of an insolvent business has a fiduciary duty to act in the best interests of its creditors. This could result in personal liability in some situations.

An alternative way to avoid personal liability for the conduct of an insolvent entity is to file a state court action (under state statute) called an Assignment for the Benefit of Creditors ("ABC"). In this scenario, a debtor entity can request that a court appoint a fiduciary "assignee," who acts like a receiver. The assignee receives the assets of the entity, liquidates them, and then pays available cash to the creditors, but only after all parties have had notice and the right to object to the process.

c. Loss of Discharge

When a debtor is not truthful about their assets or makes a "fraudulent transfer" within one year before filing bankruptcy, they may lose the right to discharge that debt forever, leaving them in "debtor purgatory." Conduct resulting in a loss of discharge can occur pre- or post-bankruptcy. There is more on the concept of fraudulent transfer below.

d. Exempt Assets

Fortunately for debtors, there are assets that remain "exempt" from creditor reach in bankruptcy proceedings under both federal and state law. Assets such as homestead, IRAs, 401(k) plans and 529 plans may be retained by a debtor, where law permits.

Obviously, it's beneficial in bankruptcy proceedings to own as many of these types of assets as possible, but that ownership must come before you are (or even may become) insolvent; otherwise, such assets may be viewed as fraudulent transfers that can be set aside. To that end, it's good practice to have such assets set aside well before disaster strikes. Your professional advisor can help you determine what assets are exempt from creditors in your state of residence and under the Bankruptcy Code. Note that state exemptions don't apply unless a debtor satisfies the 730-day or 180- day rule described below.

e. Non-Exempt Assets

These are assets subject to creditor claims, which become part of the bankruptcy estate upon the filing of a bankruptcy petition.

Non-exempt assets cannot be converted into exempt assets. Doing so would make the conversion a fraudulent transfer. As described above, debtors who file bankruptcy within one year of making a fraudulent transfer risk permanent loss of the ability to discharge debts then existing.

There are a few non-exempt assets that are nevertheless difficult for a creditor to reach into, such as multi-member LLCs in states where a charging order is the sole remedy, and where LLC agreements are executory contracts under bankruptcy law. Again, see your professional advisor to learn more about this specific and highly technical part of bankruptcy law.

f. 730-Day Rule / 180-Day Rule

These rules revolve around the state in which a debtor resides and determine which exemption laws of which state of residence apply. The 730-day rule states that a debtor must reside in the state where their bankruptcy is filed for at least 730 consecutive days before filing (that's 2 years for those of you who are counting). If a debtor does not meet the 730-day requirement, then the Bankruptcy Court will apply the exemptions of the state where the debtor resided for a majority of the 180 days immediately *preceding* the 730-day period.

For example, if a debtor moved to Florida from their home state of California, and has been living in Florida for 729 days before being filing for bankruptcy, then laws of California – not Florida – will apply, as California was where the debtor resided for the 180 days prior to the 730 consecutive day residency requirement.

Given that bankruptcy litigation can often last over two years, if you are considering a move, you may wish to do so sooner rather than later. Consult with a professional advisor to ensure that the move will not be considered a fraudulent transfer in itself, and that the move doesn't cause you to lose protected assets such as life insurance annuities, homestead, 529 plans, and tenancy by the entireties assets (assuming one spouse isn't liable) when moving from one state to another.

g. Automatic Stay

An automatic stay prohibits creditors from taking action to collect on debts owed by a debtor once bankruptcy has been filed. In this case, the creditor may petition the court to have the stay "lifted."

Note that an automatic stay does not apply to certain federal agencies such as the EPA, nor does it prevent certain federal agencies from taking action against a debtor.

h. Fraudulent Transfer/Voidable Transactions

If you've read the above definitions carefully, you understand that the concept of "fraudulent transfer" is important to bankruptcy law. The word "fraudulent" is a bit of a misnomer, as these types of transfers have little to do with actual fraud; therefore, many states now call these types of transfers "voidable transfers" instead. In either case, fraudulent – or voidable – transfers can be set aside in bankruptcy if the transfer occurred within the *later of* two years from the date of the bankruptcy or the applicable state law period (four years in most states, such as Florida, and six years in others, such as New York).

There are two types of fraudulent transfers: 1.) an "actual" fraudulent transfer is a transfer of an interest or obligation that is made with the intent to hinder, delay, or defraud a creditor; and 2.) a "constructive" fraudulent transfer is a transfer of an interest or obligation by an insolvent or soon-to-be insolvent entity, without receiving reasonably equivalent compensation in exchange.

Such transfers may cause loss of the ability to receive a bankruptcy discharge if it has occurred within one year before the debtor files for bankruptcy. It can also be set aside or subject a transferee to liability if the transfer occurred within two years before the filing of bankruptcy under the federal Bankruptcy Code, or for whatever longer period of time as may apply under state law.

Note that it may be a violation of some state's laws and/or ethical rules for a professional to assist a client in making fraudulent or voidable transfer, so if you ask your professional advisor for assistance and they refuse, you should dig deeper to understand why and note that the refusal in itself may be a warning that the action you're proposing will harm your ability to discharge debt in a future bankruptcy proceeding.

i. Preferential Transfer

This is a transfer that occurs when a corporation or other entity favors a creditor by making a payment or other transfer of property during the 90-day period prior to a bankruptcy filing to one or more unsecured creditors not within the "ordinary course of business" and not to others of the same class.

Such transfers are deemed voidable by the Bankruptcy Code. If the creditor is an "insider" (for example, a family member, friend, business partner, or person/entity with a special connection to the debtor), the 90-day lookback period increases to one year.

States may also have preferential transfer rules to consider, which could be for one year or more.

j. Insider

Under the preferential transfer rules, the one year set aside law will apply if the debtor is an "insider." All transfers made to "insiders" within one year of filing Bankruptcy should be for contemporaneous value to avoid having the preferential transfer statute apply. The definition of "insider" depends upon whether it refers to an individual or legal entity as illustrated below:

An insider is a (i) relative of the debtor or of a general partner of the debtor; (ii) partnership in which the debtor is a general partner; (iii) general partner of the debtor; or (iv) corporation of which the debtor is a director, officer, or person in control.

If the debtor is a corporation, an "insider" is a (i) director of the debtor; (ii) officer of the debtor; (iii) person in control of the debtor; (iv) partnership in which the debtor is a general partner; (v) general partner of the debtor; or (vi) relative of a general partner, director, officer, or person in control of the debtor.

If the debtor is a partnership, an "insider" is a (i) general partner in the debtor; (ii) relative of a general partner in, general partner of, or person in control of the debtor; (iii) partnership in which the debtor is a general partner; (iv) general partner of the debtor; or (v) person in control of the debtor.

k. Involuntary Bankruptcy

Involuntary bankruptcy is a legal proceeding through which creditors can petition the court that a person or business be forced into bankruptcy.

Creditors must meet certain conditions to be able to file an involuntary bankruptcy. For example, if the consumer has fewer than twelve unsecured creditors and a single creditor has an unsecured claim of $15,775 or more (as of April 2016), that creditor may file an involuntary case. Alternatively, if the consumer has twelve or more partially or wholly unsecured creditors, and the petitioning creditors have claims totaling at least $15,775 (as of April 2016), then three or more creditors must join together to file an involuntary case.

To avoid the possibility of involuntary bankruptcy, some professionals advise their clients to have at least twelve creditors and to make sure that no three of them are "unfriendly." This is a particularly important strategy for debtors who have made fraudulent transfers within one year before they may be forced into bankruptcy.

l. Doctrine of Successor Liability

Through state law, the doctrine of successor liability provides that the successor owner of a business or investment arrangement will be responsible for the liabilities of the previous owner if there is a commonality of related ownership, business identity, customers, and business assets.

Note that an arm's-length, Bankruptcy Court-approved sale by a Trustee in Bankruptcy – in a Chapter 7 or Chapter 11 Bankruptcy – can avoid imposition of the doctrine. In some states, the doctrine may also be avoided by engaging in a non-Bankruptcy Assignment for the Benefit of Creditors.

m. Attorney-Client Privilege and Work Product Privilege

These two common privileges usually prevent a lawyer's file and work product from being accessible by adverse parties to a client. These privileges are often lost in bankruptcy to the surprise of many.

n. Crime Fraud Exception

Federal and state laws prevent the assertion of the attorney/client privilege if the lawyer's actions constitute the perpetration of a crime. Committing fraud, or in some situations, communications with respect to a planned transfer to avoid creditors or concealment of assets may trigger this exception.

o. Super Creditors

There are creditors that can break through exemptions for debtor protections. These so-called "Super Creditors" presently include the IRS, the Federal Trade Commission, the Securities Exchange Commission, Medicare (for penalties), federal agencies for penalties, restitution owed to the government as the result of criminal conduct, and, in some circumstances, the Federal Deposit Insurance Company. The Small Business Administration also has special collection rights.

6.) Strategies in Bankruptcy

There are many strategies that can be used in bankruptcy to protect against creditor reach, avoid liquidation of certain assets, and negotiate down debts; however, one truth cannot be avoided – you must be able to pay for your legal and accounting fees in order to file for bankruptcy. This is one important reason why you need to hold onto your cash. Bankruptcy lawyers usually charge a retainer prior to a bankruptcy being filed, and you should reserve at least $25,000 and possibly much more to pay for their services.

If you fear – even just a little – that your situation might someday result in a bankruptcy, it is critical that you practice sound creditor protections as soon as possible. Hiring professional advisors to advise and assist with asset protection and risk mitigation will better position any eventual bankruptcy for a more positive outcome; and, if no bankruptcy occurs, you will have practiced sound planning for the future in any case.

As a recap, there are generally two primary types of bankruptcy:

(i) Chapter 7, which enables a debtor to eliminate debt and keep creditor exempt assets; and

(ii) Chapters 11 and 13, which result in a full or partial repayment plan based upon ability to pay and statutory requirements.

Depending on the situation, Chapter 11 bankruptcy may provide some benefits to the petitioner. For example, a petitioning corporation will likely receive a 90-day reprieve from paying past bills while continuing to collect accounts receivable so it can put together a plan to pay its creditors over time. Also, any debt that a legal entity discharges in the process of negotiation and settlement will normally be income tax free under Section 108 of the Internal Revenue Code, even if the shareholders are the partners of the entity and whether they are insolvent or not. Note that this tax-free rule also applies to debt that is discharged or negotiated down in Chapter 7 proceedings. Finally, to have the best chance of each class of creditors approving a Plan of Reorganization, debt planning is crucial. Positioning shareholders and others to be repaid from available assets by granting liens and first position priority may be advantageous to the negotiation process.

a. When to File for Bankruptcy

If you are considering filing for bankruptcy, or need to plan for a potential future filing, please consult with your professional advisor today, who will advise you on strategy, timing and needed resources.

In the meantime, there are some strategies to keep in mind with regard to timing. Typically, a Chapter 11 bankruptcy should not be filed immediately before any creditor may act or refuse to act in any way that would have a catastrophic impact on the business. In addition, a Chapter 11 bankruptcy should typically not be filed unless a plan of reorganization and a source of future revenue and income will be identifiable and in place within approximately 90 days of the filing of the Chapter 11 bankruptcy petition.

On the other hand, if the collateral that secures the debt is held by an uncooperative creditor, and it is lower in value now than it will be later, it may make sense to file a bankruptcy petition sooner than would otherwise be the case. For example, if the collateral is accounts receivable, and the Coronavirus business shutdown is still in effect, the value of such accounts receivable may be much lower today than what they will be once the virus freeze lifts and things go back to business as usual (hopefully). Filing for bankruptcy now may work in your strategic favor under this scenario.

b. SBRA & CARES Act Updates

There have been changes to bankruptcy law over the last year that should be noted. The Small Business Reorganization Act (SBRA) of 2019 changed the bankruptcy under Subchapter V to be more debtor friendly by increasing the amount of debt that a small business debtor can have while qualifying for a Chapter 11 bankruptcy as follows, and the CARES Act made additional changes to help small businesses:

(i) Effective February 2020, a small business debtor could have up to $2,725,625 in debt and qualify to file a Subchapter V bankruptcy under SBRA; and

(ii) The CARES Act increased the above threshold from $2,725,625 to $7,500,00, effective for cases filed after Friday, March 27, 2020.

The CARES Act also eliminated the requirement that any class or classes of unsecured creditors would have to vote on a plan in order to have the court approve the reduction or restructuring of debt. Instead, under the CARES Act, unsecured creditors cannot vote, and secured creditors will be subject to court-approved bankruptcy plan terms, which will generally provide that a secured creditor's claim cannot exceed the value of collateral secured by the applicable debt on the date that a Chapter 11 bankruptcy petition is filed. This will make it much easier and cost effective for debtors to successfully reorganize under a Chapter 11 bankruptcy.

c. Pitfalls to Avoid

(i.) Fraudulent Transfers/Voidable Transactions

While it's imperative to analyze which assets may be exposed in a bankruptcy proceeding and to make adjustments as appropriate, one important rule to keep in mind is that, other than exempt assets, any assets transferred for the purpose of avoiding a creditor may be set aside by the creditor. There are many nuances and time limits to the fraudulent transfer rules depending on your state of residence, so you should share the facts of your situation with your professional advisors. They will determine what standard business and estate planning changes might be made to best address your situation, taking into account tax, financial, estate planning, and other considerations.

Fantastic examples of how a good advisor may be able to help includes examining 529 college savings plans and discussing the advantages of putting such plans under the name of a spouse or in a spousal limited access trust for estate and estate tax planning, as well as the tax and practical advantages of using permanent life insurance and variable annuities for tax and investment planning.

There are some bankruptcy court decisions which have found that engaging in sound (and clearly called for) planning that moves assets out of the debtor's hands may be permitted – and not considered to be a "fraudulent transfer" that can be set aside – even if the transfer resulting from that planning will clearly protect the asset from a creditor, and even if the transfer occurred after the creditor was known to be in existence. This type of planning is nuanced and may put the debtor in a better negotiating position than would otherwise be the case. Moving exposed assets to exempt categories is risky, and you should be aware of what should be saved verses what should be what to spent.

(ii) Funding Negative Cashflow

Your business is in trouble. Who are you going to call? Friends, family, and trusted associates. Many will see your struggle and want to give an assist.

Be aware. Throwing bad money after bad in unrealistic situations to keep a dying business on its death bed just a little bit longer without real hope of recovery is not at all unusual. Those who advance money for struggling companies need to protect themselves in these situations or risk losing everything they put in. Many parents and others will guarantee obligations of a faltering business and later lose significant monies when those guarantees are called in, or when the preferential transfer rules force a guarantor to pay an amount equal to all payments made by the debtor on the guaranteed loan, lease or other arrangement, under the theory that each payment benefited the guarantor going back one year before the filing of a bankruptcy petition. In such cases, it’s easy to understand how these generous benefactors too easily become unwitting parties to nasty litigation.

For anyone putting money into a possibly insolvent entity, it may be best to document it as a loan to the entity, and to take a lien on any and all assets that may be liened. Another strategy may be that if the investor plans to pay off debt owned by the entity, the investor can "buy the paper" from a previous existing creditor who has a lien on assets in order to "step into the shoes" of that creditor. Ensuring that all family members and/or investors have independent legal counsel is strongly encouraged.

(iii) Attorney-Client Privilege

One of the biggest pitfalls of bankruptcy is that attorney-client privilege may be lost on the date of your bankruptcy filing. While this privilege can be asserted – or waived – in a bankruptcy case, the question of who or what entity (or entities) own the privilege and whether creditors or a trustee in bankruptcy can take it over to waive it, is crucial to pre-bankruptcy planning. This nuance of bankruptcy law differs from most state law.

The result of losing this privilege is that a bankruptcy court-appointed trustee in bankruptcy may gain access to all of your legal documents and letters. They may also be able to depose you and your lawyers. With that worrisome thought in mind, think twice before putting anything in writing.

As a potential workaround, there is no CPA-client privilege in bankruptcy or other federal court proceedings, so your lawyer may consider hiring a CPA to help with strategy as a contractor under a “Kovel-Type Letter” or agreement.

While the best bankruptcy strategy is to avoid bankruptcy, it’s important to understand that professional advisors can help you prepare, protect, and guide you through the onerous and often emotionally draining bankruptcy process.

Keeping the Wolves Out

We've discussed what to do when you have wolves at the door, as well as what happens if the wolves get in. But how do you keep the wolves out in the first place? The answer lies in the concept and practice of asset protection and estate planning.

7.) Comprehensive Estate Planning and Risk Mitigation/Asset Protection Strategies

Luckily, there are new disruptive technologies in the field of estate planning that deliver robust "asset protection" options by "firewalling" assets. These Asset Protection Trusts discourage greedy plaintiffs from filing frivolous lawsuits aimed at bullying defendants into choosing between large legal fees to defend a lawsuit – coupled with potential financial ruin – or settlement. Such trusts can also be used to protect certain assets from creditors.

The goal of asset protection is to remove any economic incentive for new creditors to go after assets that are securely protected in a trust. Protecting assets can include setting up trusts in states or nations whose laws make it difficult to violate those trusts. The HYCET™ Trust or "Have Your Cake and Eat It Too" is one such example, along with a variety of domestic and foreign asset protection trusts.

a. Foreign Asset Protection Trust (FAPT)
https://www.youtube.com/watch?v=kPEzUY9VLdQ

Selecting the most advantageous jurisdiction to establish your trust to protect your "nest egg" may be the most important risk mitigation step you can take to protect your lifestyle and financial legacy. Many countries have far more protective trust laws than we have in the United States, and more importantly, the foreign jurisdictions do not have "comity" with the U.S., meaning judgements coming from the US are not recognized in the FAPT countries. Absent a fraudulent transfer in funding your FAPT, these rules will discourage most creditors and predators from pursuing assets previously funded to your FAPT that an environment of a quick and cheap settlement will be fostered.

b. HYCET™ Trust ("Have Your Cake and Eat it Too") ®
https://www.youtube.com/watch?v=Ee3RsHA9HVw

Conventional irrevocable gift trusts typically do not allow the donor to reclaim gifted assets once made; however, the HYCET Trust can help you make the $11.58M gift tax exemption so that if you later have donor's remorse – or need or want to recapture all or part of the gifted assets – your trustee can accommodate you -- This Is Why You Get to Have Your Cake and Eat It Too!

This is how it works:

The HYCET Trust is established in a qualifying jurisdiction such as Nevada or the Cook Islands. Future potential creditors of the donor may not reach the assets gifted to the trust, yet the trust permits the trustee to later name the donor/grantor (or his or her spouse) as a discretionary beneficiary should the donor later need or want all or part of the gift reclaimed.

The hybrid HYCET Trust's revolutionary design makes this a perfect trust for these complex and uncertain times. Besides allowing for the flexibility to later recapture gifted assets, the trust can be used to freeze the value of your estate by shifting the future appreciation of your assets to the trust, thus avoiding being taxed when you die. The HYCET Trust is also a comprehensive estate planning trust. It protects assets held by the trust from future potential lawsuits brought against any of the beneficiaries—as well as from the possibility of a divorcing beneficiary's spouse reaching trust assets, and most important to this discussion – from a future tax claim or bankruptcy.

c. **Preferred Partnership Freeze**
https://www.youtube.com/watch?v=65HanYdmQP4

Not long ago, a famous politician famously stated: "Never let a good crisis go to waste." Such a crisis has arrived. To that end, there is a once-in-a-generation estate and tax planning opportunity that will likely never again be available once we recover from this current crisis.

The Preferred Partnership Freeze (PPF) takes advantage of income tax laws to achieve a basis step up at death while "freezing" the value of your appreciating assets. A PPF delivers multiple advantages, from claiming a 35% or more discount from the "frozen" values for lack of marketability and minority discount, to lowering your estate tax value imposed at your death.

Under a PPF, you must identify assets that you expect to appreciate in value, which might include real estate investments, closely held businesses, or investment portfolios, etc., and then contribute those assets to one or more limited partnerships ("LP") that are established with two classes of LP interest: 1.) a class of Preferred LP shares; and 2.) a class of Common LP shares. You retain the Preferred LP shares and then you gift or sell some or all of the Common LP shares to a newly formed dynasty trust, such as our HYCET Trust. This action removes the future appreciation of those assets from your taxable estate, as the value of your retained Preferred LP shares is frozen and will never increase in value. The appreciation is reflected solely in the Common LP shares.

At death, the "frozen" value of the Preferred LP shares is included in your taxable estate, but not the appreciated value of the Common LP shares. Because of certain special partnership tax rules, a decedent will receive a step up in basis of the Preferred LP shares, and your executor can make an election (under IRC Sec. 754), which steps up the "inside tax basis" of the underlying LP assets. Increasing the "inside tax basis" results in a higher tax basis for amortization and depreciation purposes (for sheltering rental income, for example). When the asset is later sold, the increased tax basis reduces the capital gains on which the tax would otherwise be assessed.

In valuing Preferred and Common LP shares, discounts are available for lack of marketability and lack of control, further reducing the value of the assets ultimately taxed in the estate.

Coupling these natural discounts with the current low interest rates, taken together with declining asset values associated with the tumult in the markets due to the coronavirus, this is a once-in-a-generation planning opportunity to move the significant value of your estate into a dynasty trust, like our HYCET Trust.

For those with larger estates who lack enough gift exemption to remove the assets to the dynasty trust without incurring gift tax liability, there is yet another solution. You can sell the Common LP shares to your dynasty trust for a long term (20 to 25 years) at a fixed interest rate (March AFR 1.44%, and likely lower for April). Why is this a potential solution? Any increase in value above 1.44% defers the estate tax for generations.

It's important to remember the big picture in the midst of this day-to-day crisis. As you know, the generous lifetime exemption of $11.58M will be cut in half on January 1, 2026, and if there is a change in the White House this November, estate and gift tax exemptions could be repealed altogether while tax rates increase.

This type of planning is a once-in-a-generation opportunity that will not be available once we recover from this current crisis.

Asset protection must be taken into account with the above advice on bankruptcy pitfalls – how do the two interact? The most important elements to keep in mind are the concepts of fraudulent transfer and attorney-client privilege, both of which are real risks when in taken in context with bankruptcy law. This is why any asset protection or risk mitigation planning must be done in concert with professional advisors who specialize in this type of law and financial practice.

d. Premium Financed Life Insurance
https://www.youtube.com/watch?v=HMYqREB-o5U

Most people don't mind owning life insurance they just hate to pay for it even if you can afford the premiums. If you own life insurance and are paying premiums, to conserve your cash flow, consider financing your life insurance premiums. How? You borrow the premiums from a lender who specializes in financing life insurance premiums. Interest rates are at all-time lows! You pay the lender interest only, annually, or may even accrue the interest payments and when you die, the insurance carrier issues two payments – one to repay the loan and one to the beneficiaries. Financing your premiums can reduce your cash outlay by as much as 60% allowing you to conserve your cash for emergencies.

e. IRA Rescue Strategy
https://www.youtube.com/watch?v=HMYqREB-o5U

If you live in a state that does not provide a significant creditor exemption to Individual Retirement Accounts (IRA's), such as CA[11]. In this instance, one may use our IRA rescue strategy to place the IRA assets into a foreign LLC owned by the IRA and managed by a foreign managing director. The assets are held by a foreign custodian and outside the jurisdiction of a US court order. Should a creditor seek to enforce its judgment against the IRA's assets, it will be limited to a Charging Order or lien against the LLC interest but not permitted to reach inside the LLC and take the assets under management of the managing director thereby protecting the underlying portfolio. As a further deterrent, the IRS has a published Revenue Ruling[12] that holds the assignee partners/member is responsible to report all items of income, deduction, credit, or loss. Under most jurisdictions, the holder of a Charging Order is deemed an "assignee partner/member" and therefore responsible to report the aforementioned. This may serve to discourage a future judgment creditor from seeking a Charging Order as it would not want to have to report phantom income.

Conclusion

While our future in this time of crisis feels uncertain, it's comforting to understand the steps we can take to protect our health and our financial well-being. To avoid missteps that may hurt your position as a potential debtor, seek the advice of experienced professional advisors early and often, keep as much cash on hand as possible, and practice smart planning – before you are aware of any potential future problems.

If you are a professional advisor, it's a smart idea to work with an attorney who specializes in this difficult and complex type of work to avoid pitfalls unique to financial planning and bankruptcy. This type of work is not for the general practitioner, nor is it for the individual or business to "try at home."

Keeping "the wolves" at bay isn't easy, but armed with the right tools and advisors, you may just have a fighting chance.

To learn more about any of these concepts or any other tax planning opportunity, please don't hesitate to contact us. We hope this whitepaper was helpful. In the meantime, please stay safe and healthy.

[11] California provides a "means test" to determine what will be exempt from creditors and what is available to a judgement creditor, if are not in bankruptcy.
[12] Rev Rul. 77-137