

*“You win not by chance but by preparation.”
– Roger Maris*

BURNS AND BURNS, P.C. IS AN 5.0 AV RATED LAW FIRM THAT REPRESENTS MULTI-GENERATIONAL FAMILIES AND BUSINESS OWNERS WITH THEIR ASSET PROTECTION, REAL ESTATE, AND ESTATE PLANNING NEEDS.

What is Asset Protection Planning?

WHAT IS ASSET PROTECTION PLANNING?

History reflects the great lengths individuals have taken to protect their personal wealth, their financial future and the financial future of their family. While the once popular asset protection strategies of castle walls and watery moats have been replaced, the need for ongoing asset protection planning remains today as relevant as ever. As a result, the development and utilization of modern asset protection strategies like asset protection trusts, insurance and limited liability entities continue to be an integral part of comprehensive financial planning.

Conceptually, asset protection planning functions by placing hurdles between an individual's assets and the threat from potential creditors. In furtherance of this concept, it stands to reason that the bigger the hurdle, the more likely that individual's assets will be protected from any creditor's claims. It is important to note, proper asset protection planning generally requires asset protection strategies to be in place before the occurrence of the event giving rise to the need for asset protection. Therefore, for those desirous of learning more about asset protection, time is of the essence.

WHY IS ASSET PROTECTION IMPORTANT?

Every year thousands of lawsuits are filed by individuals injured in a car accident, injured on their rental property, injured following a medical procedure or financially impacted by an unsuccessful business transaction. Further troublesome is the fact that in some of these lawsuits, the parties at fault are often financially burdened to pay damages that are arguably disproportionate to their actual liability.

As a result of the potential liability that can stem from everyday activities, individuals have become increasingly desirous of learning more about asset protection... and for good reason!

TYPES OF ASSET PROTECTION PLANNING

In today's world, the act of driving a car, performing medical procedures, operating a business or owning a rental property can expose an individual to millions of dollars in potential liability. As a result, everyone should consider implementing one form or another of asset protection strategies. Admittedly, the types of asset protection strategies an individual should implement will depend on several factors including their liability exposure and net worth.

The common types of asset protection planning strategies generally include:

- 1) insurance;
- 2) limited liability business entities;
- 3) asset transfers; and
- 4) asset protection trusts.

However, it is important to recognize that a single asset protection strategy will generally incorporate more than one of the asset protection strategies listed immediately above.

IS INSURANCE ENOUGH?

Insurance provides a great line of defense for purposes of asset protection. However, insurance has many short comings, namely: 1) not all risks can be covered by insurance; 2) liability can exceed insurance coverage amounts; and 3) the cost to obtain comprehensive insurance coverage can be cost prohibitive. As a result of insurance's shortcomings, insurance alone does not provide comprehensive asset protection planning.

ARE LIMITED LIABILITY COMPANIES ENOUGH?

Limited liability companies (LLC) provide asset protection by helping prevent the limited liability company's members from being held personally liable for LLC's debt, liabilities and obligations. Unfortunately, in certain situations an individual can be held personally liable for the debts and liabilities of their LLC especially for tort damages (e.g. negligence) as well as under the legal theory of "piercing the corporate veil." As a result, the formation of an LLC alone cannot provide comprehensive asset protection for all business transactions.

IS TRANSFERRING ASSETS BETWEEN SPOUSES A GOOD STRATEGY?

Transferring assets between spouses is a common strategy that married couples employ to try and reduce their liability exposure. For example, if one spouse has more liability exposure by virtue of their profession (e.g. a doctor or a lawyer) the doctor or lawyer would transfer their assets out of their name and into the name of their spouse. The theory is that in the event the spouse with the increased liability exposure (e.g. doctor) is sued for malpractice, the creditors would not be able to reach those assets titled in their spouse's name. Unfortunately, this strategy is not without its flaws. Specifically, what happens if the spouse holding all the assets is held liable for a car accident or files for divorce? Obviously, a transfer of title of assets is not a complete asset protection policy in itself.

ASSET PROTECTION TRUSTS

Asset protection trusts are trusts that are specifically designed to help protect an individual's trust assets from being reached by creditors. Asset protection trusts are often considered to be the highest form of hurdle or obstacle an individual can place between their assets and their creditors. As a result, asset protection trusts are increasing in popularity as a principle asset protection strategy.

The two major types of asset protection trusts are domestic asset protection trusts ("DAPT") (i.e. those established within the United States) and foreign asset protection trusts ("FAPT") (i.e. those established outside the United States). Generally, FAPT's work by removing one's assets from the laws of the United States and placing them under the laws of a more favorable foreign jurisdiction. DAPT's work in a similar fashion but utilize the laws of selective domestic jurisdictions.

As the laws for FAPT's and DAPT's differ between countries and states, careful consideration needs to be employed. For example, regarding DAPT laws, the state of Nevada is deemed to have better laws than the state of Colorado for asset protection trust planning. Likewise, for FAPT planning, the laws of the Cook Islands, Isle of Man, or Nevis are often considered to be some of the most favorable for asset protection planning.

TAKING THE NEXT STEP

As society, especially here in the U.S., continues to become increasingly litigious and jury verdicts become more and more unpredictable, asset protection planning should become an increasingly important component of every individual's overall financial planning strategies. For more information on how asset protection planning works, please contact BURNS AND BURNS, P.C. for more information.

About the Author **Scott F. Burns, Esq.**

Scott F. Burns, Esq. is an Arizona attorney whose clientele includes professional athletes, business owners, and families desirous of protecting their personal and professional legacies through the use of asset protection strategies, estate planning and business consulting.

For Additional Information
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