“Asset Protection”
Introduction

The Wealth Preservation Institute
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Are your clients asset protection plans put together?

Help your clients complete the asset protection puzzle
Asset Protection as a client gathering tool

- Most clients with wealth are not asset protected.
- All physicians and most other professionals (CPAs, attorneys, financial planners (CFPs), insurance agents) are also worried about asset protection because of “personal” lawsuits.
- Many “advisors” are not asset protection guru’s (even though they know very little about the topic and pitch junk to clients).
- If you can deal with the topic in a credible manner and in a manner that is easy for the client to understand, the topic will be a great client gathering tool.
Asset Protection Makes Friends

• When you can show a client why their assets are not protected and;
• Show them what the devastating financial consequences of not being asset protection can be and;
• Show them how simple it is to fix the problem with your help;
• YOU WILL MAKE FRIENDS OF YOUR CLIENTS WHO WILL LOOK TO YOU FOR OTHER INCOME GENERATING BUSINESS.
Don’t let your clients Put all their Eggs in One Basket

- Multiple Entity Approach
- Debt shields
- Segregation techniques
  - AR
  - Real Estate
  - Valuable Equipment
Personal Protection Tools

By Law
- Homestead
- Life Insurance, Annuities
- Wage account

By Action
- FLPs/LLCs
- Offshore
- Irrevocable trusts
- Debt shields
What is Asset Protection Planning?

• Asset protection is simply helping clients protect their wealth from creditors that arise from negligent actions of our clients.
• Asset protection is helping client avoid paying too much in taxes (estate and income).
• Asset protection is helping people avoid losing money from downturns in the stock market.
• The material in asset protection modules I, II and III will focus on protecting assets from creditors.
• A good portion of the rest of the CWPP™ course will focus on the how to protect assets from the IRS and from downturns in the stock market.
What is good asset protection planning?

• Good asset protection:
  – is NOT about “hiding” assets.
  – uses existing laws to put up barriers in front of creditors to discourage creditors from attacking personal assets.
  – is legal.
  – can be complicated or simple.
  – can be expensive or not.
  – can be domestic or offshore.

• Good asset protection CAN NOT prevent lawsuits.
  – The majority of claims filed against physicians are without merit.
  – Anyone can be sued for anything (although the claim might get dismissed, a defendant still has to deal with it).
Who needs asset protection?

- Anyone with Money (the simple answer).
  - High income/net worth clients
- Anyone who can not hide behind the asset protection of a corporation.
  - Physicians
  - Attorneys
  - CPAs/accountants, EAs
  - Financial Planners
  - Stock Brokers
  - Insurance agents
  - Architects
- Even if a professional is acting as an employee of a company, he/she can not hide behind the limited liability of the company and can be sued personally.
- Therefore, if you are in one of the above listed fields, you too need asset protection.
Reasons non-professionals need asset protection

• If your clients have or own the following, they have asset protection problems:
  – Residence.
  – Teenage children.
  – Boat, automobile, waverunner, snowmobile (protect the estate from the asset not the asset from creditors)
  – Vacation rental.

• Why?
  – Slip and fall at the home, bad handrail, party at the house and someone drives home drunk and gets into an accident.
  – Teenage children who have parties when parents are away (*The parent is liable* when a friend drive home drunk and is injured).
  – Negligent driving (drunk driving).
  – Defective condition of the property and the owner has a higher duty to take care of the property.
What assets should be protected?

- Family Home or Condominium
- Rental Property
- Non-Rental Property
- IRAs
- Stocks or Mutual Funds
- Life Insurance
- Bank Account or CD’s
- Planes, Boats, Automobiles, Wave runners or Motorcycles
- Other business entity (especially S or C-Corp stock)
- Collectible items that have significant value
- Accounts Receivables *(at the medical practice)*
- Other personal real property of value
- Future Inheritance for Family
Corporate Entities

- Sole proprietorships (2nd worst)
- Partnerships (worst)
- C-Corporations (not great)
- S-Corporations (not great)
- LLCs (tool of choice domestically)
- FLPs/LPs (tool of choice domestically)
The Charging Order

A charging order is the only remedy a court of law can award a creditor who is trying to get (obtain) the assets of a debtor when the assets are in an LLC (or limited partnership).*

A charging order DOES NOT allow creditors to sell assets of the LLC, or to force distributions of income.

*This assumes the LLC or FLP is setup in a state with a statute that states a charging order is the sole remedy. (Always check your state statute to make sure there have been no changes in the law)

*This assumes the LLC or FLP is a “multi-member” entity.
Example

- Patient Lucky sues for malpractice and obtains a judgment against Dr. Smith for $3,000,000. Dr. Smith has $1,000,000 worth of medical malpractice coverage and has all the rest of his major personal assets owned by an LLC of which he owns 95% and his spouse owns 5%.
- Lucky asks the court for satisfaction and asks the court to have Dr. Smith turn over the assets in his LLC to him.
- The court tells Lucky that the **only remedy** the court can give to him is a “charging order.”
What a creditor cannot get with a charging order

• 1) A charging order does not transfer the interest in the LLC to the creditor or force the debtor to sell his/her interest and turn over the sale proceeds to the creditor.
• 2) A creditor cannot force the LLC to sell assets.
• 3) A creditor cannot force an LLC to distribute income
What does a creditor get with a charging order?

- The right to pay income taxes on income generated in the LLC but NOT distributed.
- There was a revenue ruling issued in 1977 (77-173) which states that a creditor (patient) who obtains a charging order can be treated as a partner for federal income tax purposes.
Example

• Using the example with Lucky who has a $3,000,000 judgment against Dr. Smith.

• Assume that Lucky obtained a charging order against Dr. Smith’s LLC, which owns Dr. Smith’s $1,000,000 brokerage account and $1,000,000 vacation home in Florida.

• Further assume that the LLC earns dividend income of $25,000 a year from the brokerage account and rental income from the vacation home of $20,000 a year.

• Normally, Dr. Smith takes the combined $45,000 as income from the LLC and spends it as he sees fit.
• When Lucky obtains the charging order, Dr. Smith decides not to take any of the $45,000 out as income and instead leaves the income in the LLC.
• As a pass through entity, Dr. Smith would normally be taxed on the income personally.
• Now that Lucky has a charging order against Dr. Smith’s LLC, Lucky, **not** Dr. Smith, would receive the income from the LLC.
• Lucky gets a **K-1 for the taxes** on what would have been distributed from the LLC to Dr. Smith. If Dr. Smith were a 100% owner of the LLC interest, Lucky would get a K-1 for all $45,000 that he **NEVER** received.
• This is called **phantom income** (which is income you do not receive but have to pay taxes on anyway).
What A “Charging Order” Means

- Doesn’t become partner (ULPA sec 27)
- Can’t touch Assets
- Gets no FLP voting rights
- Can’t force FLP distributions

Creditor gets the K-1 (Rev. Ruling 77-137)
on phantom income
IRS no longer pursuing charging orders
Topics not covered in this module

- Divorce Protection
- Long Term Care Insurance
- Estate Taxes
- Use of Life insurance and annuities
- Protecting the personal residence
- Type of tenancies which are poor asset protection tool
- Community property states
- Trustee and D&O liability
- Self settled asset protection trusts
- QPRT
- Debt Shields
- A/R protection
- Offshore planning
There is only one way to help a client reach their asset protection goals.
Overview for the Professional Designation: CWPP™
(Certified Wealth Preservation Planner)

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What do Advisors want?

• To earn more money?
• To have more knowledge than other advisors?
• To provide better advice to clients on multiple topics?
• To be more credible than other advisors?
• A team of advisors for support and back office when dealing with “advanced” planning.
• The ability to market to CPA, Attorneys and physicians through continuing education credit.
• Are these of interest to you?
  – If so you are a candidate to become an APP™ or CWPP™
The WPI and CWPP™/APP™

• What is the **Wealth Preservation Institute** (WPI)?
  – The **only** educational entity in the country devoted to provide education on “**advanced**” planning (asset protection, tax and estate planning)
  – The **only** entity in the country focusing on topics that apply mainly to the **high income/net worth client**.
  – Certifying entity for the CWPP™ designation.

• The CWPP™ course is a **24 hour certification** program which can be taken all **online** or **in person**.

• The Asset Protection Planner designation is for those simply want to deal with AP (12 hours).
Marketing

• The WPI helps certified advisors market in two several very unique ways.

• 1) The ability to become an instant author through a 340+ page “ghost book.” You can read the table of contents at http://www.thewpi.org/newindex.php?dept=51&pid=495

• The WPI will allow CWPP™ advisors to give CPE continuing education courses on a local level to CPAs and accountants.

• The WPI has a number of articles that CWPP™ advisors can use to place in local medical, accounting, legal and other business journals.
Topics

- What topics are covered in the CWPP™ course?
- **Asset protection (3 hours)**
  - Domestic
  - Offshore
- **Deferred Compensation (4 hours)**
  - WealthBuilder® Annuity; Traditional NQDC and the Leveraged Bonus Plan®
  - Qualified plans/412(i) plans
  - ESOPs
  - IRAs
- **Business Planning (6 hours)**
  - Account Receivables (A/R) Leveraging
  - VEBAs and 419A(f)(6) Plans
  - Section 79 Plans
  - Closely Held Insurance Companies
  - Corporate Structure
Continued

• **Estate Planning (8 hours)**
  - Basic
  - “Advanced”
  - Life Insurance
  - Premium Financed Life Insurance
  - Medicaid Planning
  - Qualified Pension Insurance Partnership® (Mitigating the 75% Tax Trap)
  - Charitable planning
  - Long Term Care Insurance

• **Personal Finance (4 hours)**
  - Annuities
  - Life Settlements
  - Reverse Mortgages
  - Private Annuity Trust
Next Seminar?

• The next in person seminar is in NJ on the 15-17th of November.
• The course can be taken completely online.
• The 2006 in person seminar schedule will be out in December, 2005.
• Keep checking back to www.thewpi.org for posting.
• Group discounts. If you have 5 or more advisors who want to take the course, please contact The WPI for information on course discounts.
Questions?

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