



What Every Physician Business Owner and Professional Needs to Know About Asset Protection

By: Jeffrey R. Matsen, Esq.



As we are all aware, over the last few decades expanding theories of liability and the proliferation of litigation has given increased emphasis to Asset Protection Planning to the extent that it is now a well recognized area of practice. However, traditional Estate Planning has always encompassed the concepts of asset preservation and protection. Accordingly, all of us who have business owners, physicians and other professionals as clients need to be able to integrate our Estate and Business Planning with Asset Protection Planning in order to properly serve the needs of our clients. Certainly the area of Asset Protection Planning is a concern for all of these types of clients.

Why has there been such an increase liability exposure over the past thirty years? There are several reasons, the principal ones of which are as follows:

1. Plaintiffs' lawyers have made huge contingency fees on malpractice and other kinds of claims and class action lawsuits. Obviously, the financial reward drives this kind of legal action.
2. The deep pocket theory where those who are "have nots" want a piece of the assets of those "who have".
3. We live in a victim-oriented society where everyone tries to place blame with financial remuneration attached to it on someone who has the financial resources to pay.
4. The increase media and society awareness of claims results in high notoriety for these types of lawsuits and creates a ready and willing audience of plaintiffs.

Business owners, physicians and other professionals are especially high profile targets because of the public perception of wealth of these types of individuals. The job of the lawyer is to assist these types of clients in setting up and arranging their assets and affairs in a manner that will

successfully transfer their legacy to their heirs in the most orderly and tax saving manner while at the same time preserving and protecting their property during lifetime.

I like to talk about implementing the three "Ps":

- **Preserve** assets for their heirs and family by structuring the proper Estate Plan and by reducing death taxes.
- **Protect** assets during their lifetime by creating liability shielded entities and lowering financial profiles
- **Process** the plan by properly designing and implementing strategies in the most practical and skillful manner.

After several discussions and meetings with my Wealth Counsel colleagues and other attorneys, I have devised a significant and fundamental approach to addressing all the legal and tax concerns of business owners, physicians and other professionals by implementing the three "Ps" in a systemic tiered approach which I call "The Ladder of Success". Each step on the ladder or level of strategy provides immediate asset protection and estate planning benefits. Some or all levels of the complete ladder will be applicable to every business owner, physician and professional depending on the individual state of their career development and net worth. The steps on the ladder and the levels of strategy are as follows:

Level One: The Business Entity Itself:

This is the entity that must shield and protect the business owner or professional from direct claims against the operating business. There are also several tax and management issues that have to be addressed at this level dealing with the operation of the client's business.

Level Two: Basic Estate Planning:

This is the fundamentals of Estate Planning involving the

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Revocable Trust, Pour Over Wills, Durable Powers of Attorney, Healthcare Directives and Medical Record Release Forms. This level has to be integrated with all the other levels so that the entire plan is cohesive and well coordinated.

Level Three: Exemptions and Marital Planning:

At this level, we examine and review exemptions such as ERISA Plans, homesteads, insurance and annuities. Many of these exemptions are state law driven and have to be analyzed on the state of residence basis. Marital planning can be very important with respect to the division of assets between the working and non-working spouse and in some states it is critical as to the manner of how property title is held with respect to the married couple.

Level Four: Liability Protected Entities for Investment Assets:

It is especially critical that real estate be protected from claims that may well be either beyond the limits or outside the coverage of insurance and the limited liability company seems to be the best vehicle for this purpose. Other types of investments can also be placed in LLCs for additional protection.

Level Five: Domestic Modular Planning with Asset Protection Trusts:

As we are all aware, many states have now adopted favorable Asset Protection Trust legislation such as Nevada, Delaware and Alaska. This means that the Domestic Asset Protection Trust can be utilized to hold title to the member interests of LLCs that hold the underlying investment assets.

Level Six: Offshore Modular Planning with Foreign Asset Protection Trusts:

For those clients who have sufficient liquidity and preferably some international connections or attributes, the Offshore Asset Protection Trust can be utilized as the owner of offshore LLCs into which investments and capital can be

placed. Because of the jurisdictional limitations involved, this approach maximizes the Asset Protection potential for the client.

Level Seven: Advance Estate Planning Techniques:

This level examines more advanced Estate and Asset Protection Planning techniques such as GRATS, Private Annuities and QPRTS as well as certain types of insurance vehicles.

In conclusion, by addressing the concerns of professional and business owner clients in this tiered analysis program, the Preservation, Protection and Processing of Estate and Asset Protection Planning can all be accomplished. This area will be more specifically addressed and discussed during two presentations that I will make at the upcoming Planning for the Generations Symposium to be held in Chicago on August 5, 6 and 7.

Jeffrey R. Matsen provides sophisticated asset protection, estate and business planning services to affluent individuals and families, prestigious institutions and highly successful business owners. Matsen has been designated and honored by Worth Magazine as one of the nation's "Top 100 Attorneys".