



Advancing Asset Protection in Your List of Offers

By: Kevin Quinn, J.D.



As the estate tax exemptions have increased, with the possibility of new legislation liberalizing Medicaid benefits, and the unprecedented number of bankruptcy filings, asset protection should take a new and more important role in our consciousness as planners.

In my experience, the first step to increasing your asset protection business and improving both the quality of your asset protection offerings and the profitability of this area of your practice is to increase your own consciousness about this important planning area. There are many roadblocks to successfully accomplishing this objective. Many of your referral sources see you as the “tax guy” or the “Medicaid gal” and neither know that you offer asset protection planning, or even what asset protection planning is. It is also a fact of human nature that we are more likely to repeat that with which we are comfortable, rather than take on new tasks and expand or consciousness into unfamiliar territory. If your processes, your referral sources and your team are all geared to saving estate taxes, avoiding probate or planning for a future Medicaid application, it is easier to repeat the familiar, and what you are “good at” than it is to expand your wings and examine an additional client offering.

Sometimes a story or an experience, which you imbed in your consciousness, will allow you to reach your goal faster. In addition, by setting specific goals for a number of asset protection cases or a dollar amount of revenue from asset protection cases will allow you to increase your consciousness of this area practice.

One of the first times that I came to truly understand the importance of asset protection planning was in the winter of 2000. A couple came to me who were business owners. They had recently had their business appraised and completed bank financing for restructuring the debt in their business. Accordingly, they were able to present very clear and official financials on their net worth. At the time, estate taxes were their biggest threat, and the bulk of our planning was estate tax planning. One of the tools we used was an irrevocable life insurance trust. Shortly after 9/11 I got a call from the client who informed me that she ‘was sitting in the bankruptcy

attorney’s office, and the bankruptcy attorney wanted to know about this life insurance policy that was in a trust’. This client had in just a few short months moved from having a significant estate tax burden to filing for bankruptcy. There is much more to this story, but in the end the bankruptcy attorney was very happy that the cash value of this insurance policy was protected by the trust.

As I write this article, there is snow and ice on the ground in New England. As the owner of a building that invites in the public, I’m very conscious of the need to have safe pathways, avoid ice buildups, etcetera. Again, these are experiences that have added to my consciousness about asset protection planning. These experiences keep asset protection planning at the top of my list of offerings, and allow me to share real life examples with clients.

Most of us deal with centers of influence: financial advisors, accountants, trust officers, etcetera, who refer business to us on a regular basis. If you are going to increase your asset protection business, you might want to spend time with each of your centers of influence educating about asset protection. Just as you had to educate these intelligent and capable people about living trusts, about probate avoidance, about “funding” trusts, about IRA distribution planning and about Medicaid planning, you may need to educate your referral sources about asset protection planning. Allow me to share some experiences that may help you in this process. In my experience asset protection planning can be threatening to financial advisors. Many are unfamiliar with these strategies and anything you are offering their client about which they are unfamiliar is threatening.

Under some circumstances, you may need to be very careful in your planning to assure that you do not cause the broker or investment advisor to lose assets under management through your planning. Many very effective strategies will allow the client to retain their existing advisors and accounts. Not all asset protection strategies or situations will allow for domestic accounts and advisors. Your advisor may have the impression that he or she will lose the account if the client employs an asset protection strategy.

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As an example, most domestic investment companies will not deal with a trust that has no domestic trustee. Most broker-ages will, however, work with an account that is owned by a partnership or LLC, which is in turn owned by a trust which is partially or totally controlled by a foreign trustee.

To the uninitiated much in the area of asset protection is thought to be “smoke and mirrors”, scams, unsavory or downright dishonest. These misconceptions are no different than the misconceptions many of us experienced in the early days of the “living trust revolution”. Each advisor will come with his own baggage, her own experiences or lack of experiences, and it is up to us to assure that those advisors obtain the proper education about the proper use of asset protection tools.

Most advisors at some point in their education have been taught that they can be held personally and professionally responsible should they assist someone in a fraudulent transfer. While this is true, most absorb only the problem, and do not understand how to avoid making a fraudulent transfer or that you are not going to allow the client to make a fraudulent transfer.

Finally, in my experience, it's also important to learn to set expectations with both your referral sources and your clients early on in the asset protection engagement. Just as a general surgeon would not attempt to do a neurological procedure, but would bring in a neurosurgeon to assist; as you build your competence and experience, in increasingly sophisticated asset protection, you may well wish to co-counsel with more experienced counsel. This is how I learned asset protection planning. I still use experienced co-counsel on a regular basis for the more sophisticated asset protection planning cases. You may also find that a client in your state has assets that are out of state, and of course, there can be significant differences state to state in the application of homestead exemptions, exempt property rules, etcetera.

Consider developing personal contacts in the field and secondly, incorporating in your conversations with clients a comfortable reassuring means of communicating to the client that you may chose to bring in specific co-counsel to help with areas that are outside of your specific area of expertise.

You may also wish learn how to set expectations with clients

about specialized accounting services and either domestic or offshore professional trustees. None of these outside services are necessary in all asset protection planning. Very good asset protection planning can be done for very reasonable rates using traditional vehicles. In my experience, however, it is important to learn both what is necessary and what is available so as to set the expectation for the client. For the proper client and situation you will want to offer the absolute best results that are available and if necessary, you will be pleased assure that the client has proper accounting services, trustee services and specific co-counsel as necessary to assure the their family's assets are as protected as possible.

The one thing that we know is that things will change. We may be headed for a huge economic recovery or we may have bumpy years ahead of us. As entrepreneurs, we know that during tight times, business owners dip deeply into lines of credit, extend payables, reduce receivables, and stretch the usefulness of technology and equipment to get through the difficult times. One of the reasons we may not see a significant drop in bankruptcies in 2010 is because many entrepreneurs have so extended themselves that any additional stress, the loss of the key customer, even a loss of the key employee or key vendor will literally be the straw that breaks the camel's back. While I would hesitate to forecast, I would expect bankruptcies to stay at a high rate for some period of time. For some of your clients, it might be too late, but for others, especially those who do not currently have claims against them, and have avoided personally signing for their business debt, you can provide an extraordinarily valuable service in helping protect their personal assets from the creditor or predator that lies around the corner.

As the estate tax exemptions increase and other threats to successful wealth transfers decrease, I would simply propose that we owe it to our clients to increase our awareness and personal capabilities in asset protection planning.

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