<u>THE BASICS OF ASSET PROTECTION FOR PHYSICIANS</u>

By Jason F. Haupt

With the rising cost of medical malpractice insurance and the trend by insurance carriers to take an increasingly critical approach to claims that arise in a malpractice setting, physicians are drastically scaling back their malpractice insurance coverage and seeking alternative ways to protect their personal assets from the reach of creditors. As advisors, it is our job to find ways for physicians to get the best of both worlds – lower professional insurance coverage and comprehensive asset protection planning.

Two keys to a successful asset protection plan are timing and structure. Asset protection that takes place after there is a known threat of a lawsuit will likely be set aside and the transfers involved will be deemed fraudulent (i.e. for the purpose of avoiding creditors). A well-structured plan will accomplish the goals of discouraging litigation, allowing access to funds, easing operation and application of funds, keeping the assets within the physician's control, providing tax benefits from an estate planning standpoint, and protecting family assets.

To accomplish these objectives, physicians and their advisors often employ the following common tools: (1) gifting, (2) irrevocable trusts, (3) spousal transfers, (4) family partnerships, and (5) off-shore trusts. Gifting, trusts and spousal transfers look to get the assets out of the name and control of the physician. However, the physician should strongly consider the tax and logistical ramifications of such options.

Family partnerships typically involve the formation of a limited liability entity and transferring thereto family investment assets, with the parents as the initial owners of these family partnerships and thereafter gifting ownership (usually nonvoting, non-control interests) to children or grandchildren. This setup protects the assets transferred from creditor attack by limiting any one owner's liability to his or her interest in the entity, which, depending on the structure of the entity, is essentially a devalued asset. Often the interests in these entities are transferred into trust, which provides an additional form of asset protection.

Off-shore trusts, created under the laws of foreign states, provide a degree of protection against the claims of litigants. However, off-shore trusts can be a risky tool depending on the stability of the foreign jurisdiction, the understanding of the laws of that jurisdiction, and the recent scrutiny applied by the IRS to such trusts.

Physicians wishing to develop their own asset protection plan should consult with their advisors regarding these and other tools.

NOTE: This general summary of the law should not be used to solve individual problems since slight changes in the fact situation may require a material variance in the applicable legal advice.

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