

ASSET PROTECTION PLANNING FOR THE SINGLE PHYSICIAN

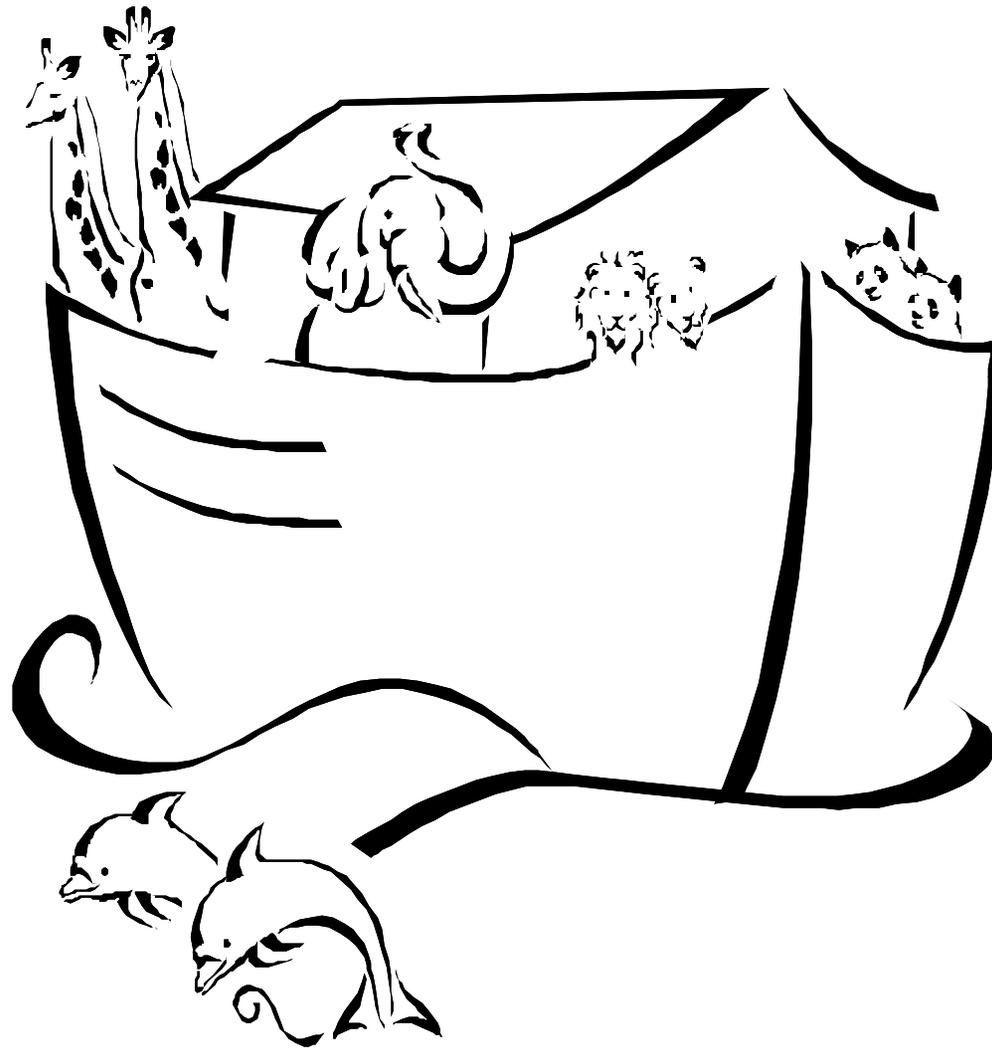
Tuesday, July 26, 2011 5:30 p.m.

By: Alan S. Gassman, J.D., LL.M.



agassman@gassmanpa.com

“It wasn’t raining when Noah built the ark.”



“Anything that can go wrong will go wrong.”

-Murphy's Law

“Anyone who acts as his own lawyer has a fool for a client.”

-F. Lee Bailey

“Perfectionists don't always win.”

“Don't handicap your children by making their lives easier.”

-Robert A. Heinlein

CHECKLIST FOR SINGLE PHYSICIAN CREDITOR PROTECTION

Needs to be done
Done
Delegate to...
Not sure

| | Needs to be done | Done | Delegate to... | Not sure |
|---|------------------|------|----------------|----------|
| Malpractice insurance and possible corporate malpractice insurance policy. | | | | |
| Umbrella liability insurance. | | | | |
| IRAs, pensions and similar plans are properly conducted and invested. | | | | |
| Homestead is under ½ acre if within city limits, or maybe partly owned by a separate family entity if not. | | | | |
| Pay off the homestead mortgage first? | | | | |
| Annuity contracts and life insurance policies with cash values are owned individually by the doctor, and not by a trust or other entity. | | | | |
| Appropriate consideration of “cash value” life insurance and annuity investments, to include cost and tax considerations. | | | | |
| 529 plans for potential education expenses. | | | | |
| Consideration of planning for non-homestead real estate ownership. | | | | |
| LLCs or other entities to limit liability for potential real estate or other mishaps, environmental waste, tenants or guests being injured, or being sued by a purchaser. | | | | |
| Charging Order Protection? | | | | |
| Trust systems for children and other loved ones in place, and integrated into any creditor protection mechanisms, including asset protection trusts. | | | | |
| A team of qualified and caring advisors, including a CPA, investment advisors, qualified lawyers, and good malpractice and personal liability insurance agents. | | | | |

INTRODUCTION

- A single Floridian's situation is more challenging than that of a married Floridian.
 - Married couples hold most assets jointly as T.B.E.
 - Not an option for unmarried individuals.
- Debtor-creditor laws: some assets are treated as “exempt”, some as “non-exempt”.
- Some assets are difficult to penetrate such as ownership in limited partnerships and limited liability limited partnerships (but not limited liability partnerships (LLP)).

FLORIDA RESIDENTS- LEARNING HOW TO PROTECT YOUR ASSETS IN TWO MINUTES

| CREDITOR EXEMPT ASSETS | ASSETS THAT ARE DIFFICULT FOR A CREDITOR TO OBTAIN | ASSETS EXPOSED TO CREDITORS |
|--|---|--|
| Homestead <i>-Up to half acre if within city limits. -May be immune from fraudulent transfer statute.</i> | Limited partnership and similar entity interests. | Individual money and brokerage accounts. |
| IRA <i>-Includes ROTH, Rollover, and Voluntary IRAs, but possibly not inherited IRAs.</i> | Foreign trusts and companies. | Joint assets where both spouses owe money. |
| 401(k) <i>-Maximize these!</i> | Foreign bank accounts. | One-half of any joint assets not TBE where one spouse owes money. |
| Permanent Life Insurance <i>-Must be owned by insured.</i> | Note – foreign entities are very rarely recommended and must be reported to IRS - | Personal physical assets, including car, except for \$4,000 exemption (\$1,000 if homestead exemption is claimed in bankruptcy). |
| Annuity Contracts | <p><u>Vocabulary:</u></p> <p>EXEMPT ASSET – An asset that a creditor cannot reach by reason of Florida law – protects Florida residents.</p> <p>CHARGING ORDER PROTECTION – The creditor of a partner in a limited liability partnership can only receive distributions as and when they would be paid to the partner.</p> <p>FRAUDULENT TRANSFER - Defined as a transfer made for the purpose of avoiding a creditor. Florida has a 4 year reach back statute on fraudulent transfers. A fraudulent transfer into the homestead may not be set aside unless the debtor is in bankruptcy. It takes 3 creditors of a debtor who has 12 or more creditors to force a bankruptcy. Upon filing a Chapter 7 Bankruptcy, an individual debtor may be able to cancel all debts owed and keep exempt assets, subject to certain exemptions. Annuities and life insurance policies are not always good investments, and can be subject to sales charges and administrative fees. There is a lot more to know- but this chart may be a good first step.</p> | |
| Wages of Head-of-Household | | |
| Wage Accounts | | |
| Tenancy by the Entireties (joint where only one spouse is obligated) <i>- Must be properly and specially titled – joint with right of survivorship may not qualify.</i> | | |
| 529 College Savings Plans | | |
| Annuity Contracts | | |

Creditor Protection – Introductory Concepts

1. Debtor - a party who owes money.
2. Creditor - a party who is owed money by the debtor.
3. Judgment - a court order establishing that a debtor owes money to a creditor. The existence of a judgment is almost always necessary before a creditor can seize a debtor's property.
4. Plaintiff - a party suing to get a judgment against a defendant.
5. Defendant - a party being sued by a plaintiff.
6. Exempt Assets - assets that are protected from seizure under the creditor laws. A debtor will generally be able to keep these assets notwithstanding that a creditor may have a judgment against the debtor.
7. Non-exempt Assets - assets of a debtor that are subject to creditor claims.

Creditor Protection – Introductory Concepts

8. Fraudulent Transfer - the name given to a transfer of assets from a creditor available status to a creditor non-available status if a primary purpose was to avoid known creditors. Under federal and state law, such transfers may be set aside if the assets are within the jurisdiction of an applicable court making such a finding. Outside of Bankruptcy Court, Florida has a statute of limitations on the ability of a creditor to set aside a fraudulent transfer, which in many cases runs 4 years after the applicable transfer. This does not apply in a transfer of assets to homestead. Under bankruptcy law, however, a discharge can be denied if there has been a fraudulent transfer made within 1 year of the bankruptcy filing. Also, the homestead exemption may be limited to \$136,875 if there has been a “fraudulent transfer” to homestead within 10 years of filing bankruptcy. There is also a 10 year set aside rule for “fraudulent transfers to asset protection trusts and similar arrangements” under the 2005 Bankruptcy Act.

9. Preferential Transfer - A transfer that may be set aside under state or bankruptcy law, such as a transfer made to any party within 90 days of filing a bankruptcy, or a transfer made to an “insider” within one year of filing the bankruptcy. See also Florida Statute §726 (providing a two year look back on transfers).

Creditor Protection – Introductory Concepts

10. Bankruptcy - a federal process whereby every debtor has the right to file in the bankruptcy court, generally under Chapter 7, Chapter 11, or Chapter 13.
11. Chapter 7 Bankruptcy - generally the debtor will sacrifice all non-exempt assets which will be divided among creditors. After the date the bankruptcy is filed, the creditors will not be entitled to anything other than a share of the non-exempt assets that exist at the date of the bankruptcy filing. A Trustee is appointed to administer the non-exempt assets among the creditors. The debtor will receive a discharge, meaning that the debts formerly owed by the debtor are “discharged”.
12. Chapter 11 and 13 Bankruptcies - under these the debtor may establish a plan to pay creditors in part or in full over time (a reorganization).
 1. Debtor in Possession. The person or entity filing a bankruptcy who remains in control of the assets and activities subject to court supervision.
 2. Dirt for Debt. The concept whereby a lender holding a mortgage on property worth as much as is owed may be required to accept the property in full satisfaction of the indebtedness notwithstanding personal guarantees or other monetary obligations that would otherwise apply.
 3. Lien Stripping. The concept whereby a debtor in bankruptcy holding an asset worth less than what is owed may have the mortgage lien of the lender reduced to that value, leaving the mortgage lender as an unsecured creditor for much of the amounts owed. A mortgage lender hoping to eventually recover more value than what a low appraisal reveals might be very unhappy as the result of a lien stripping action.

Creditor Protection – Introductory Concepts

13. Joint and Several Liability - the concept that individuals who participate in a negligent or improper act will be totally liable for all damages imposed to the extent that the other "co-defendants" do not pay their fair share. There are limitations on joint and several liability pursuant to Florida Statute Section 768.81.
14. Vicarious Liability - the concept that an employer is generally responsible for liabilities incurred by an employee acting within the scope of the employee's duties.
15. Secured Interest - the concept whereby a creditor can record a mortgage or lien on assets whereby that creditor would be entitled to repossess the assets and sell them at auction to satisfy a debt owed to the creditor. Real estate is liened by the recording of a proper mortgage and personal property can be liened by recording a UCC-1 Financing Statement.
16. Marshaling of Assets - whereby a party having a lien against assets may be forced to sacrifice their position if there are plenty of other assets that it has access to, to satisfy the obligation of the debtor. Over secured creditor issues may also arise.

Creditor Protection – Introductory Concepts

17. Charging Order - a creditor owed money by a limited partner or LLC member cannot take assets from the entity, but instead is to receive any distributions that will be paid if and when paid. The court may also order limited access to borrowing or use of entity assets.
18. Firewall Protection - the concept that the shareholder of a corporation or limited partner in a limited partnership will not be liable for liabilities incurred by the entity--which is why many companies put the more hazardous activities under a separate subsidiary.
19. Limited Liability Partnerships, Limited Partnerships, Limited Liability Limited Partnerships, Limited Liability Companies, Professional Limited Liability Companies, and Partnerships of the above Entities - the names given to various legal entities which have different effects as to firewall, tax, and charging order versus asset seizure protection – be very careful on which entity you choose because they don't all offer the same protections.
20. Asset Protection Trust - a trust arrangement whereby creditors of the grantor may not have access – which is contrary to Florida and basic common law that if the grantor could receive any benefit whatsoever, then creditors may receive all assets.

Creditor Protection – Introductory Concepts

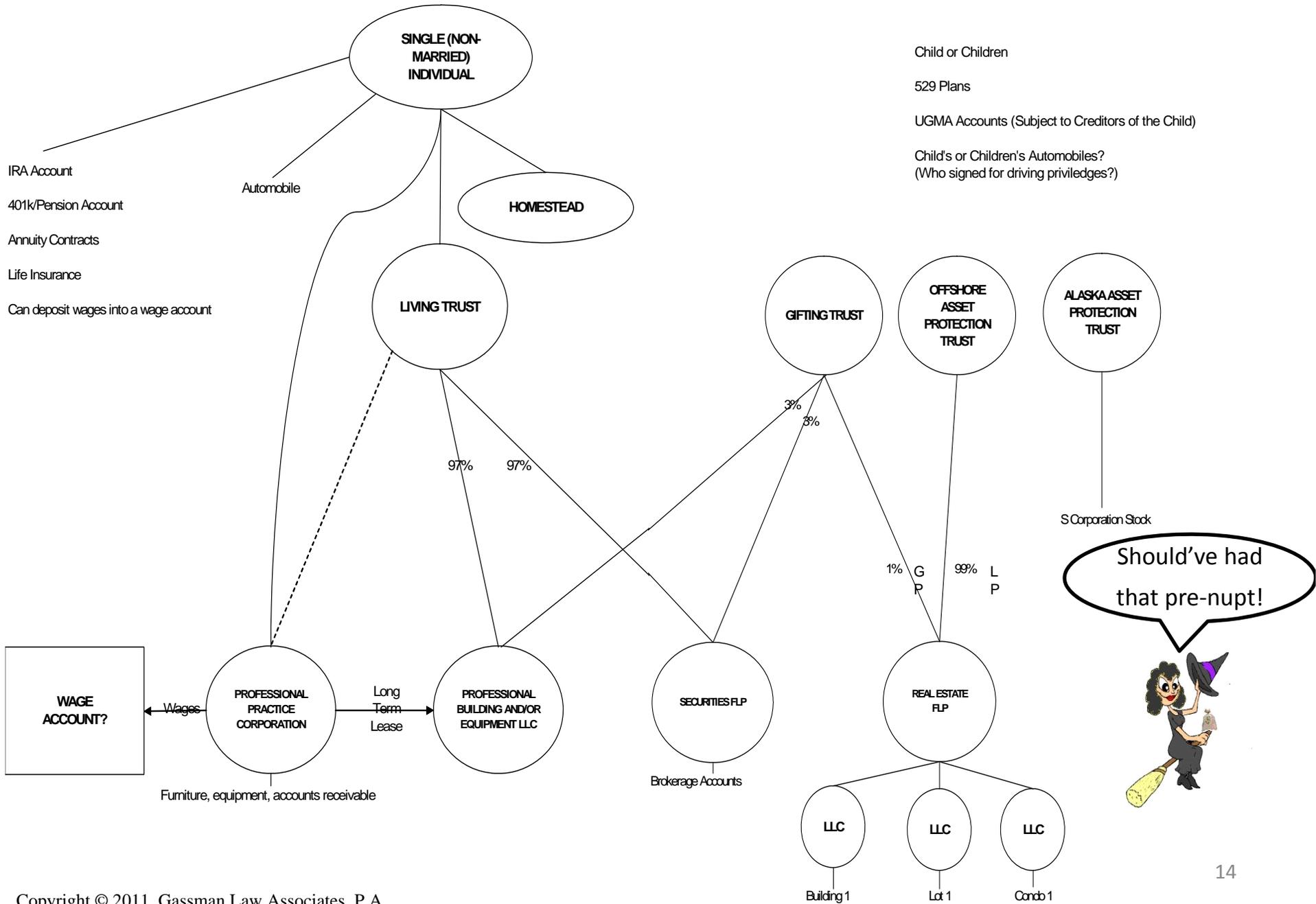
21. Bad Faith - the malpractice insurance carrier has an obligation to settle any claim within the limits of coverage of the physician, if reasonably possible. The failure of an insurance carrier to settle within policy limits can result in the carrier being responsible for an “excess verdict.” When this occurs, the plaintiff’s lawyer will often settle with the defendant by receiving an assignment of the defendant’s right to pursue the insurance carrier for the excess amount.

If the malpractice carrier believes it has a 90% chance winning at trial and a 10% chance of losing with a verdict well over policy limits, then it makes sense for the carrier to take the chance, but not from the point of view of the physician. If the carrier takes the chance then if it has acted in bad faith it will be responsible for any excess verdict. Private legal counsel is commonly hired to encourage the carrier to settle within policy limits, and a physician should almost never encourage a carrier not to settle or be without private representation when the carrier or its lawyer recommends private representation! Fortunately, most verdicts exceeding coverage limits result in the physician assigning their bad faith claim to the plaintiff in exchange for a total release, particularly where the physician is otherwise judgment proof.

Creditor Protection – Introductory Concepts

22. Automobile Liability - per Florida Statute Section 324.02(9)(b)3, the owner of a motor vehicle in Florida is liable for operation up to \$300,000 per incident, which can be covered by insurance or up to \$500,000 per incident if the permitted user does not have liability insurance. Therefore, a wife can safely own an automobile driven by the husband if there is appropriate liability insurance. On the other hand, Florida Statutes are not absolutely clear as to whether the liability limitation will apply where an automobile is owned jointly, so often it is recommended that the non-physician spouse own the automobile and allow the physician spouse to drive it. This limitation does not apply to non-individuals (like corporations) that own automobiles. Many businesses therefore have their automobiles owned by the individual drivers or in subsidiary companies.

ESTATE AND ASSET PROTECTION PLANNING FOR THE SINGLE PROFESSIONAL



The Homestead

- The Florida Constitution protects a homestead:
 - Outside the city limits for up to 160 acres of contiguous land.
 - Inside the city limits for up to ½ an acre of contiguous land.
 - Owners residing outside the city who were later annexed in, are protected for up to 160 acres provided they retain ownership of the home.
- Constitutional protection prevents a forced sale of the property except for 3 specific instances:
 1. Payment of taxes and assessments on the property.
 2. Obligations contracted for the purchase, improvement or repair of the homestead (most notably, a mortgage).
 3. Obligations contracted for labor performed on the property (generally known as a mechanic's lien).

Additionally, the Supreme Court held that the IRS may force the sale of homestead property when the individual owes back taxes.

The Homestead

- The **2005 Bankruptcy Act**: if the debtor is in bankruptcy, a “fraudulent transfer” into the homestead within 10 years of filing may be set aside.
 - This forces many single Floridians to avoid being forced into bankruptcy (even when there is a judgment against them).
 - A debtor with 12 legitimate creditors generally cannot be forced into bankruptcy.
 - Three creditors would have to work together.
 - Unpaid credit card bills might be considered legitimate debt for these purposes if a few hundred dollars is owed on each of them.
 - Other bankruptcy law exceptions to homestead protection, which apply only if and when the homeowner is forced into bankruptcy.

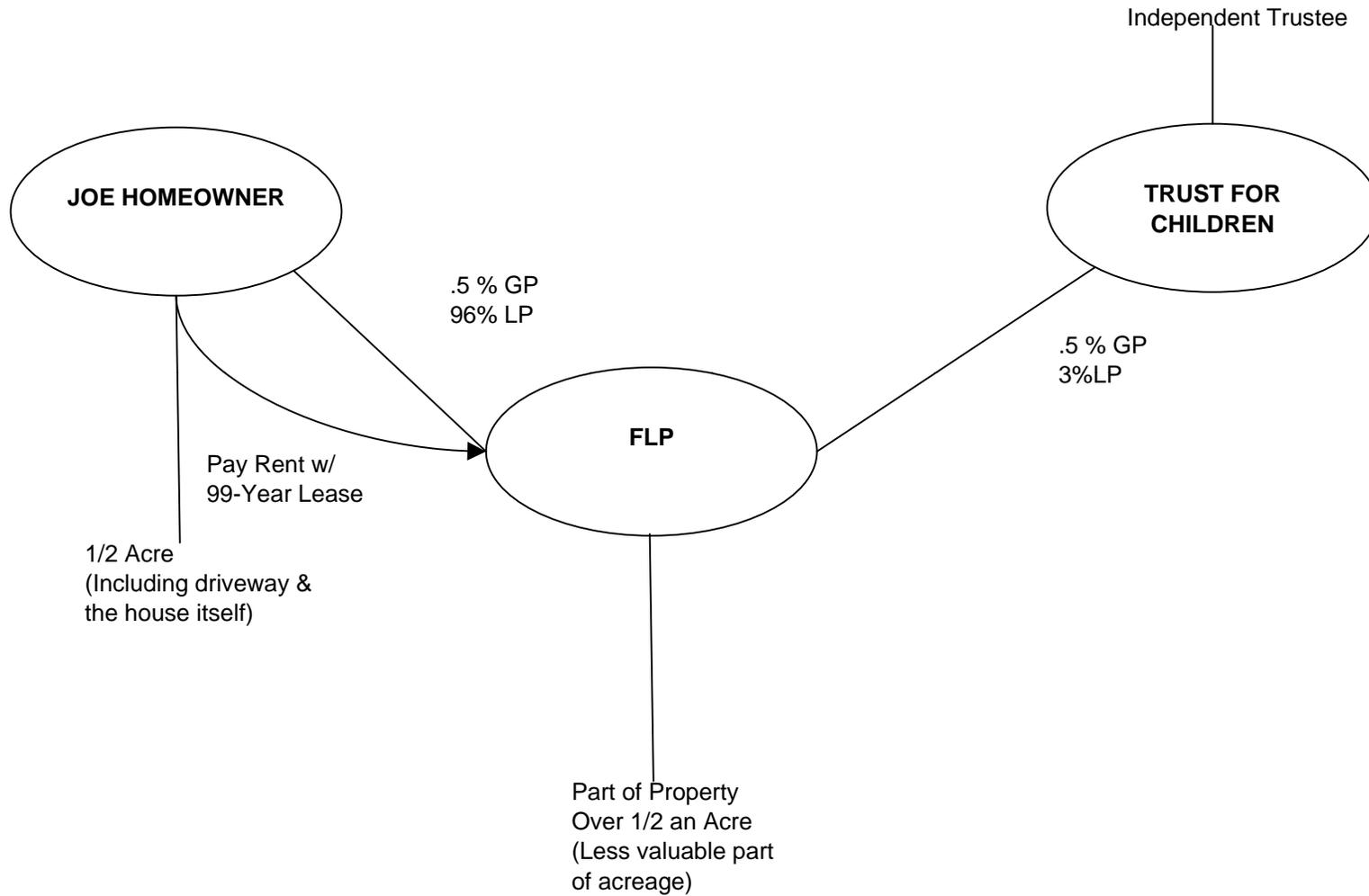
Other Bankruptcy Law Exceptions

- a) 730 Day Residency Requirement.
 - Florida law does not apply unless the debtor has lived in Florida for at least 730 consecutive days.
 - If not, it must be determined where the debtor lived for the previous 180 days.
- b) The 3 ¼ Year (1215 day) Requirement.
 - A home can only be protected if the debtor has owned the home for at least 1,215 days.
 - Does not have to be the primary home.
- c) The 10 Year Rule.
 - Once in bankruptcy, a debtor can set aside a fraudulent transfer into the homestead.
- d) Carry Over Rule.
 - If proceeds of a home sale are used to buy another home, bankruptcy law allows tracing.
 - Protects the values from the sale of the home for purposes of counting days/immunity from the 10 year fraudulent transfer.

Other Bankruptcy Law Exceptions

- e) Willful or Malicious Misconduct.
 - The debtor can only protect \$136,875 if the debtor owes debt arising from any criminal act, intentional tort, or willful or reckless misconduct that caused physical injury or death to another individual in the preceding 5 years.
- f) While Collar Crime.
 - Protection limited to \$136,875 if the debtor owes a debt arising from any violation of the Federal Securities Law, any State securities law, or any regulation or order issued under these laws.
 - Limit also applies on debt arising from fraud, deceit, or manipulation in a fiduciary capacity.

GIFTING PART OF THE “HOMESTEAD”



Pension Plans and IRAs

- Pension plans are protected under federal pension law and state law.
- In Florida, any money or asset payable or interest to an owner/participant/beneficiary in a fund or account is exempt from all claims of the creditors of the owner/beneficiary/participant so long as the plan/governing instrument is pre-approved by the IRS as exempt from taxation under Internal Revenue codes.
 - Exemption for pension, IRA and other “retirement accounts” that qualify.
- Upon death, pension plan benefits are paid to the plan beneficiary.
 - The beneficiary of an IRA or pension residing in Florida was supposed to have protection from a creditor standpoint on the death of the planned participant or IRA holder, but the courts have construed this statute to mean that such protection would not apply. The legislature will hopefully fix this problem, but IRA dispositions into trusts will be safer for beneficiaries who may have creditor issues.
 - Some clients have beneficiaries residing in states that do not protect IRA benefits.
 - Some clients have beneficiaries they would like to protect from a spendthrift, divorce, or future law change.
 - If the beneficiary has creditor issues, it may be wise to make the benefits payable to a spendthrift trust.

Pension Plans and IRAs

- IRAs

- IRAs are creditor protected both under Florida law and the Federal Bankruptcy Act.
 - The federal act protects both traditional and ROTH IRAs, however the act contains a limit of \$1,095,000 for IRA contributions (does not count monies placed in an IRA as a pension account rollover).

- Exception for Simplified Employee Pension Plans or a SIMPLE retirement account.
 - This amount is calculated without regard to amounts attributable to rollover contributions under certain Internal Revenue Code provisions and earnings on them.
 - This amount may be increased.

Annuity Contracts

Florida Statute 222.14:

The cash surrender value of life insurance policies issued upon the lives of the citizens or residents of the state and the proceeds of annuity contracts issued to citizens or residents of the state, upon whatever form, shall not in any case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or of any creditor of the person who is the beneficiary of such annuity contract, unless the insurance policy or annuity contract was effected for the benefit of such creditor.

- The cash value of a deferred flexible variable annuity contract will be exempt.
- If such an annuity contract has a cash surrender value, the above language may be read to only protect the proceeds of annuity contracts where the debtor is the beneficiary of the contract.
- Under a variable annuity contract the individual gives money to an insurance company that invests the money in funds that the individual may direct (with an obligation to give the funds back to the owner/life time beneficiary upon his/her request).
- Income withdrawn from annuities is subject to income tax as ordinary income, even if based upon capital gains that occurred within the contract.
- If an individual owner younger than 59 withdraws, they will have to pay an additional 10% excise tax on income within an annuity contract.
- Borrowing on an annuity contract is considered making a withdrawal.
- Cash value and “whole” and “universal” life insurance policies can work the same way.

Life Insurance Contracts

Florida Statute 222.13:

Whenever any person residing in the state shall die leaving insurance on his or her life, the said insurance shall inure exclusively to the benefit of the persons for whose use and benefit such insurance is designated in the policy, and the proceeds thereof shall be exempt from the claims of creditors of the insured unless the insurance policy or a valid assignment thereof provides otherwise. Notwithstanding the foregoing, whenever the insurance, by designation or otherwise, is payable to the insured or the insured's estate or to his or her executors, administrators, or assigns, the insurance proceeds shall become a part of the insured's estate for all purposes and shall be administered by the personal representative of the estate of the insured in accordance with the probate laws of the state in like manner as other assets of the insured's estate.

- This statute provides protection against the creditors of the insured's estate, but not the creditors of the beneficiary.
- If a beneficiary has or may have a creditor protection issue, benefits should be payable to a protective trust.
- Permanent life insurance policies can have significant associated costs, as can annuities.
- Many foreign countries have laws which permit design flexibility for life insurance and annuity contracts.
 - Not currently available in the US, but may nevertheless qualify for favorable US tax treatment.
 - One of the last legitimate “going offshore to save tax dollars” industries.
 - Beware of the fraudulent transfer.

Personal Property

- An individual is entitled to exempt personal property of up to \$1,000 in value.
- If a homestead creditor's exemption is not claimed, then the interest in personal property would be \$4,000.
- In recent cases, the above statute added \$4,000 to the previous \$1,000 personal property exemption, making \$5,000 the total allowable amount for an individual who does not own homestead property or claim a homestead exemption.
- Further, a debtor's interest, not to exceed \$1,000, in a single motor vehicle is also exempt from attachment, garnishment or other legal processes.

A FLORIDA PHYSICIAN'S GUIDE TO PROTECTION OF WAGES AND WAGE ACCOUNTS

Florida law provides limitations upon the access that creditors may have to “wages” and “wage accounts” earned and funded by Florida residents.

Florida Statute Section 222.11 provides that wages earned by a head of household will generally be immune from creditors.

Head of household has been defined to mean that the wage earner provides most of the support for themselves and other family members. For example, where the wage earner's spouse earns more than the wage earner, the wage earner may not qualify as “head of household” for creditor exemption purposes unless it can be shown that the actual wages earned by such person provide more than half of the support for at least one other family member.

Wages do not include dividends that are paid attributable to ownership of a professional practice, as opposed to being labeled as wages. Wages are subject to employment taxes.

A family member being supported should be a relative, or maybe a non-relative, who actually resides in the household with the wage earner.

Some courts have indicated that where the wage earner is a shareholder in a closely held corporation, and can thus manipulate between what would be received as wages and what would be received as dividends, then no wages may be protected. These unfortunate bankruptcy court decisions have not been appealed, and point out the importance of taking regular paychecks and having arms length employment agreements in place so that wages are paid periodically in a traditional manner to enhance the probability that they will be protected.

If wages are “creditor exempt,” then it is important to maintain the creditor exempt status of the wages by depositing them into an account or other investments that will also be creditor exempt.

Other creditor exempt assets that wages may be “converted to” can include paying down the mortgage on a protected home, investing the paycheck directly into a properly titled annuity contract or life insurance policy, funding a tenancy by the entirety account where the wage earner’s spouse would not be sued by the same creditor as the wage earner, or making deposits into a **wage account**.

Physicians who have monies or investments that are not creditor exempt might be well advised to spend down the non creditor exempt savings, while accumulating wages in a wage or other protected account.

The Florida statutes do not explicitly impose any ownership, titling, naming or other specific requirement for an account to qualify as a wage account. A “wage account” can be owned by the physician earner, or may be held as tenancy by the entirety by the physician earner and the physician’s spouse.

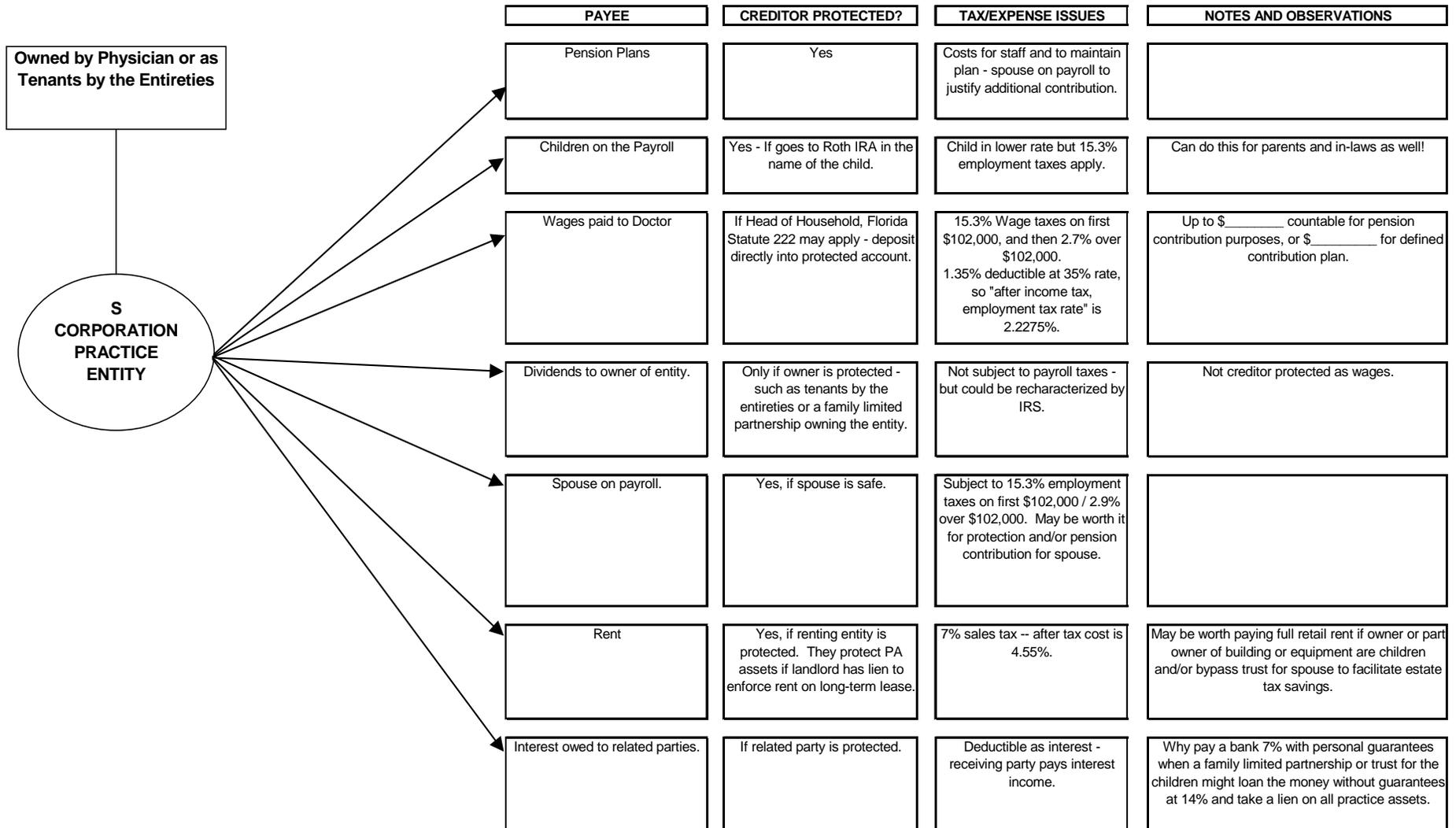
Most, if not all, married physicians whose spouses do not practice with them will be better protected by depositing their wages into a tenancy by the entirety account so that the wages may be safeguarded for two reasons: (1) the wage exemption rules as described above will apply, and (2) to “invade” a tenancy by the entirety bank account, a creditor must have a judgment against both spouses or show that the transfer into the account was “fraudulent transfer.” If a wage check is a creditor exempt asset, then the deposit of the wage check directly into a protected tenancy by the entirety account should not be considered a “fraudulent transfer.”

Many physicians and bankers waste a lot of time opening “wage accounts” where tenancy by the entirety accounts or other vehicles just, as if not more, protective and would qualify as wage accounts anyway.

The statute simply says that wages are protected for six months in the account so long as they can be traced, and thus are not confused with non-wage or older wage deposits that would not be protected.

It makes sense to have an account funded solely by wages, and to “empty the account” into other exempt investments, at least every six months, so that there would never have to be a tracing and proof analysis as to wage money protection.

CHOICES AND FACTORS WITH RESPECT TO ALLOCATION AND PAYMENT OF MEDICAL PRACTICE INCOME FOR THE SOLO PRACTITIONER



Do Not Drop Your Liability Insurances!

- Nothing is for certain – State and Federal legislation often changes.
- It is best to employ several techniques to avoid creditor exposure and to maintain reasonable levels of personal, business, and umbrella liability policies.
- We find that many clients are underinsured with respect to umbrella coverage.

Family Limited Partnerships and LLCs

MEMORANDUM

TO: CLIENTS AND ADVISORS

DATE: JUNE 3, 2011

RE: CHARGING ORDER REPAIR BILL SIGNED BY GOVERNOR

Concerns over the Florida LLC charging order law have been resolved in favor of multiple member LLCs and their owners.

On Tuesday, Governor Scott signed the new bill which took into account the Florida Supreme Court Olmstead case, which will no longer be pertinent for multiple member LLCs.

It will still be important that LLC Operating Agreements and other documents be appropriately worded and structured.

Single member LLCs will not have charging order protection.

Our 18 page article on the new law and matters associated therewith will appear in the LISI financial advisor system shortly, but if you would like an advance copy, please let us know.

Family Limited Partnerships and LLCs

By way of background, Charging order protection means that upon receiving a judgement against an LLC member a creditor cannot take over part ownership or take assets out of the LLC, but is instead limited to being paid as and when the LLC makes distributions, with the LLC not having any obligation to make any distributions at any time.

Last summer, the Florida Supreme Court held in the case of *Olmstead v. Federal Trade Commission* that a charging order was not the sole remedy for a judgment creditor of the sole member of a single member LLC. The Court's reasoning also indicated that charging order protection may not apply for multiple-member LLCs.

The new legislation makes it clear that charging order protection will apply in a properly structured multiple-member LLC situation. The legislation is retroactive to the initial passing of the LLC statute in the 1990s. Single member LLCs will not be accorded any substantial treatment, although the new legislation provides that a creditor of a single member LLC owner will not be able to seize assets or control of the LLC if the Court is convinced that the creditor will be paid in full within a reasonable time.

It is important to note that an improperly drafted or structured multiple-member LLC arrangement may not qualify for charging order protection. Many LLC members and managers may, therefore, want to have their LLC operating agreements reviewed to be certain that the legislative fix will be beneficial to them.

Using Debt

- Some individuals who owe money will “pledge” assets as collateral for loans.
- Many individuals use “secured debt” to help insure that creditors will not be very interested in pursuing their assets.
 - A person owning real estate individually or under a family limited partnership structure might elect to have money borrowed on the real estate and to invest the proceeds of the money in a personally owned annuity contract.
- Many physicians/professionals arrange to have debt in place which is secured by their practice into the accounts receivable, furniture and equipment.

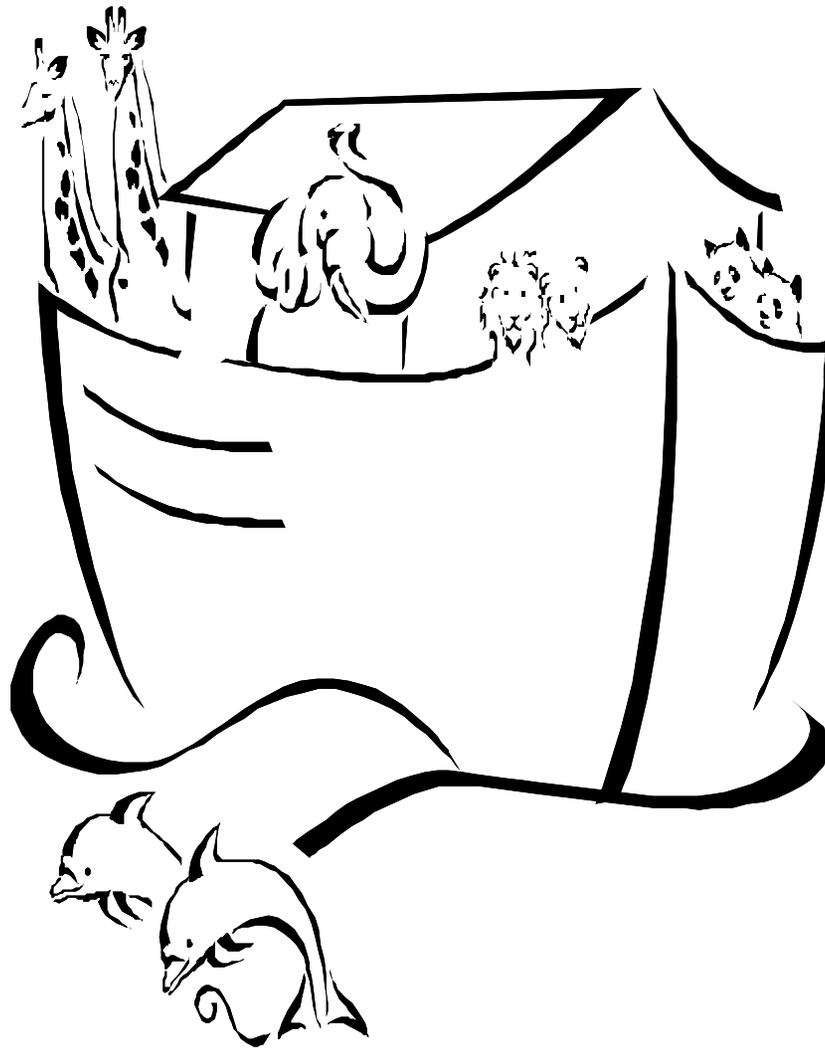
Asset Protection Trusts

- A spendthrift provision can be inserted into a trust document to prevent the beneficiary's voluntary or involuntary transfer of their interest in the trust.
 - These are often inserted to protect the trust assets from a beneficiary's current or future creditors.
 - Florida Law and traditional trust law state that a grantor that creates a trust for his/her own benefit and inserts a spendthrift provision cannot hide behind that provision.
- The laws of several jurisdictions, including Alaska, Delaware, and Nevada, provide that assets placed in a trust that benefit the grantor may be protected from creditors under many circumstances.
 - It is unknown whether the “full faith and credit clause” of the Federal Constitution will prevent Florida courts from requiring the court of another state to turn assets over to creditors if a Florida court determines that such a trust has been formed for a bad purpose.
- Clients who would not mind leaving the United States and residing elsewhere may find asset protection trusts to be very desirable vehicles.

Firewall Protection

- Certain endeavors that would normally result in liability may be placed under a limited liability company, a regular corporation, or certain other limited liability entities to provide “firewall” protection.
 - The shareholder or member of a company or LLC is not responsible for liabilities of the company itself absent guarantees, personal negligence, or certain other exceptions to firewall liability.
- Individuals working on behalf of or managing a limited liability entity may become responsible for their own acts or acts of those that they are (or should be) supervising.
- It is often possible to structure debt, ownership, and multiple corporate arrangements in a manner to reduce exposure to creditors under professional practice circumstances.

“It wasn’t raining when Noah built the ark.”



Biography

Alan S. Gassman is an attorney practicing in Clearwater, Florida with the firm of Gassman Law Associates, P.A. Mr. Gassman's primary practice focus over the past 26 years has been the representation of high net worth individuals, physicians and business owners in estate planning, taxation, and business and personal asset structuring. Mr. Gassman speaks often for national and state sponsored continuing education programs and publishes several articles each year in publications such as such as BNA, Estates and Trusts Magazine, Estate Planning Magazine, The Florida Bar Journal, Leimberg Estate Planning Network (LISI), and Medical Economics, and has presented dozens of Webinars for professionals on a variety of topics.

Mr. Gassman has a law degree and a Masters of Law degree (LL.M.) in Taxation from the University of Florida, and a business degree from Rollins College. He is board certified by the Florida Bar Association in Estate Planning and Trust Law, has the Accredited Estate Planner designation for the National Association of Estate Planners & Councils, has been and is a commentator for the Leimberg LISI Estate Planning Network, past President of the Pinellas County Estate Planning Counsel, and co-chair and lecturer for two annual Florida Bar Tax Section conferences (Wealth Conservation and Physician Representation). Mr. Gassman holds a prestigious AV rating from his peers on the Martindale Hubbell attorney listing.

Mr. Gassman can be contacted at agassman@gassmanpa.com, or by phone at 727-442-1200. The Gassman Law Associates, P.A. website is www.gassmanlaw.com.