FREE WEBINAR

Planning for the Single Physician

Presented by:

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Saturday, June 6, 2020
9:00 AM – 9:30 AM ET
(30 minutes)

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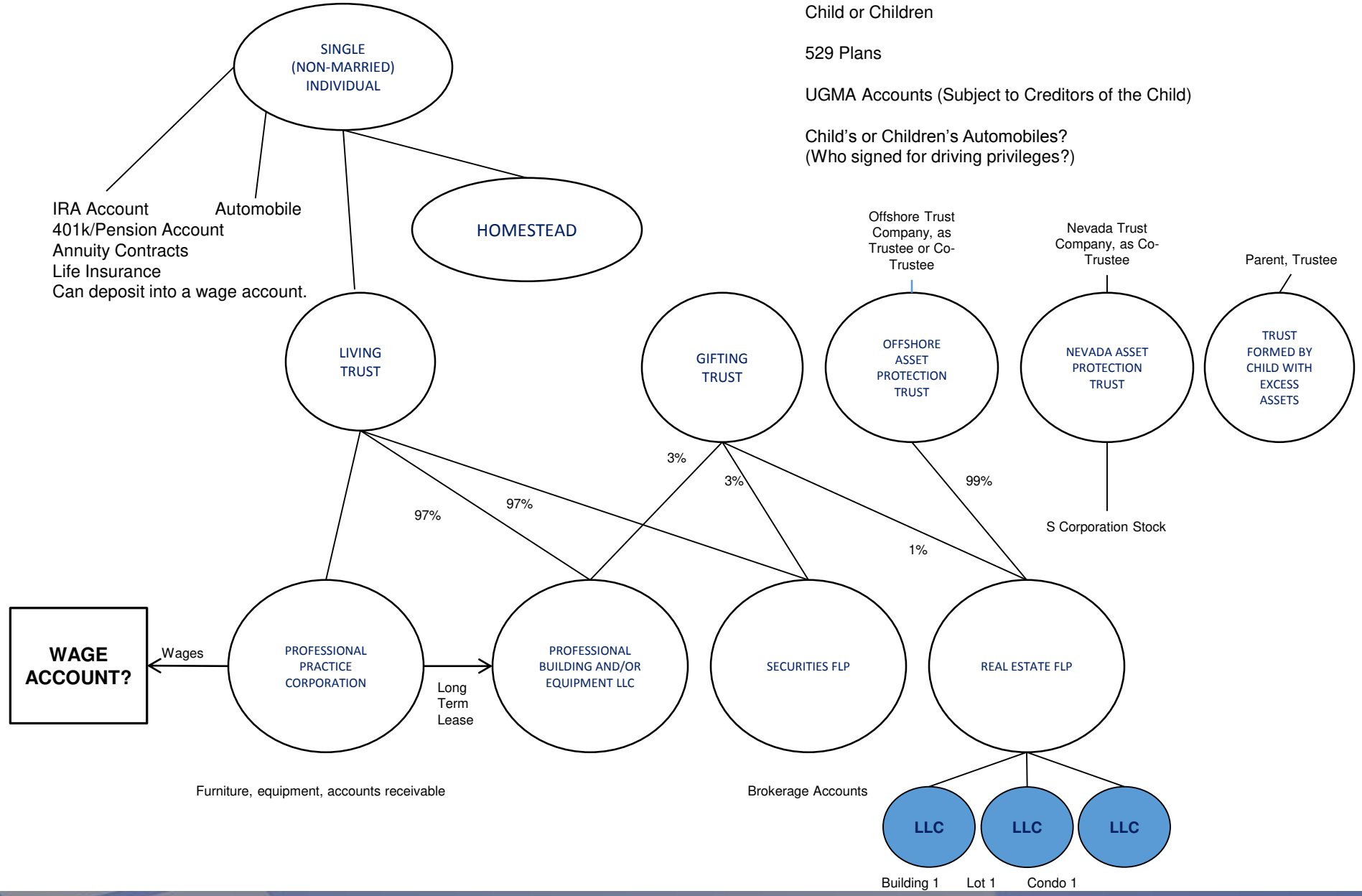
Estate & Asset Protection Planning for the Single Professional



CHECKLIST FOR SINGLE PHYSICIAN CREDITOR PROTECTION

	Done	Needs to be done	Not sure	Delegate to…
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.				

ASSET PROTECTION CHECKLIST – Page 1

	PROTECTED OWNERSHIP CATEGORIES	NOTES		LIABILITY INSULATION	NOTES
1	Assets exempt by Florida Constitution, Statute, Common Law or Federal Law. (*Note: The above exceptions do not apply to the IRS, FTC, SEC, or other "Super Creditors", such as the Department of Justice when pursuing RICO perpetrators.)*		1	Make sure housekeeper, in-laws, and all others are covered if they drive your cares or reside in your residence.	
1(a)	Homestead.		2	Car ownership, and which parent signed to be responsible for the driving of a minor.	
1(b)	Tenancy by the entireties.		3	Car driving by children, spouses, employees and others.	
1(c)	Pension and IRA.		4	Firewall protection provided by LLC's, companies and various partnerships (LLP's, LP's and LLLP's).	
1(d)	Life insurance policies.		5	Triple Net Lease language to protect landlord – must give tenant total control of property.	
1(e)	Annuities		6	Managers may get sued.	
1(f)	529 Plans		7	Delegate to management company.	
1(g)	Disability and Social Security Benefits		8	Guests may sign releases.	
1(h)	Others		9	Independent contractor arrangements.	
2	Charging Order Protection.		10	Bartenders for personal parties.	
3	Property owned by others.		11	No guests on wave runners.	
4	Property sold for Note or annuity payment rights.		12	No alcohol served to anyone under the age of 21.	
5	Third Party Settled Trusts.		13	Appropriate underlying and umbrella liability insurance – for each property, car, 4-wheeler, etc. But beware of exceptions and illegal situations that will not be covered.	
6	Self-Settled Trusts in Asset Protection Trust jurisdiction.				
7	Foreign assets, entities and accounts in jurisdictions that do not recognize U.S. judgments.				
	BUSINESS AND INVESTMENT CONSIDERATIONS			**OTHER CONSIDERATIONS**	
1	Liability and casualty insurance review, with personal use interaction and business umbrella to be considered.		1	Income and estate tax avoidance – buy a felony to avoid paying IRS taxes or to conspire to help someone avoid such payment – same applies as to debt owed directly to the FDIC and certain other governmental creditors.	
2	Friendly lenders.		2	Marriage and divorce – ex-spouse cannot invade TBE assets held with new spouse or invade new spouse's interest in a homestead or TBE homestead.	

ASSET PROTECTION CHECKLIST – Page 2

	BUSINESS AND INVESTMENT CONSIDERATIONS	NOTES		OTHER CONSIDERATIONS	NOTES
3	Separate activities and exposures.		3	Impact on an estate plan.	
4	Leasing arrangements with landlord rent right secured by UCC-1 on tenant's property.		4	Federal and state criminal law.	
5	Car use.		5	Exposure of the advisor.	
6	Car ownership.		6	Exemptions that apply on death – do not make life insurance or annuities payable to an estate or to a trust that provides that estate obligations must be paid.	
7	Delegate to offshore employees.		7	Client guarantee.	
8	Employee causes of action – make sure they have Workers' Compensation.		8	Confidentiality – use an anonymously owned LLC from Wyoming, Delaware or Colorado to serve as manager of operational LLC's and Trustee of Homestead Land Trust, and file Certificates of Authority in each county where real estate is located.	
9	Separate intellectual property rights.		9	Equity Stripping – debt secured by a mortgage or lien on valuable assets at risk may be payable to arm's-length lenders or related party lenders under a number of various arrangements.	
10	Alcohol at events.		10	Make your children self-supporting.	
11	Using independent contractors.		11	Get divorced soon, or not at all.	
12	Client/Patient/Supplier Arbitration Agreements.				
13	Consider New Parent F Reorganization to separate assets within a company without triggering capital gains.				
14	Consider factoring accounts receivable to a related company that may be held for descendants.				
15	Trusteed or Partnership/LLC based Buy/Sell Life Insurance Arrangement.				
16	Consider leasing use of equipment on a triple net basis – be sure all activities are insured.				
17	Pension contributions.				

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.

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).

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.

Creditor Protection – Introductory Concepts

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.

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.

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.

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.

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 *-Up to half acre if within city limits.* *-May be immune from fraudulent transfer statute.*	Limited partnership and similar entity interests.	Individual money and brokerage accounts.
IRA *-Includes ROTH, Rollover, and Voluntary IRAs, but possibly not inherited IRAs.*	Foreign trusts and companies.	Joint assets where both spouses owe money.
401(k) *-Maximize these!*	Foreign bank accounts.	One-half of any joint assets not TBE where one spouse owes money.
Permanent Life Insurance *-Must be owned by insured.*	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	**Vocabulary:** **EXEMPT ASSET** – An asset that a creditor cannot reach by reason of Florida law – protects Florida residents. **CHARGING ORDER PROTECTION –** The creditor of a partner in a limited partnership, limited liability limited partnership, or properly drafted LLC can only receive distributions as and when they would be paid to the partner. **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.	
Wages of Head-of-Household		
Wage Accounts (for six months only)		
Tenancy by the Entireties (joint where only one spouse is obligated) *- Must be properly and specially titled – joint with right of survivorship may not qualify.*		
529 College Savings Plans		

Assure as best possible that inheritances will be received under protective trusts where the Physician may be the sole Trustee.

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.

A Florida Physician's Guide to Protection of Wages and Wage Accounts

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 entireties 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 entireties by the physician earner and the physician's spouse.

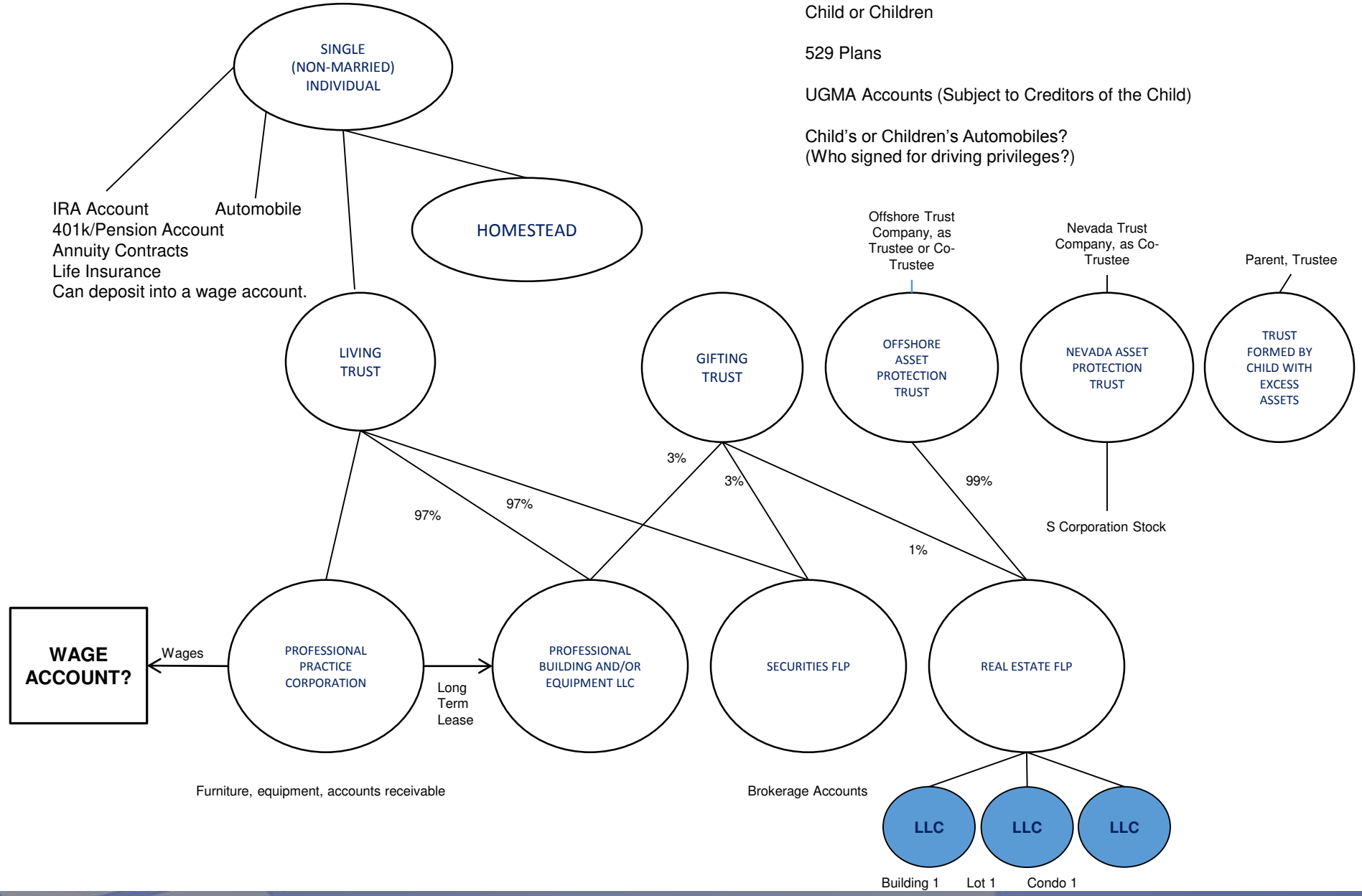
Most, if not all, married physicians whose spouses do not practice with them will be better protected by depositing their wages into a tenancy by the entireties account so that the wages may be safeguarded for two reasons: (1) the wage exemption rules as described above will apply, and (2) to "invade" a tenancy by the entireties 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 entireties account should not be considered a "fraudulent transfer."

Many physicians and bankers waste a lot of time opening "wage accounts" where tenancy by the entireties 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.

Estate & Asset Protection Planning for the Single Professional



8 COMMON LLC PLANNING ERRORS

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

Some of the most common problems we encounter in reviewing LLC arrangements for clients are:

1. TENANCY BY THE ENTIRETIES" DESIGNATION THAT WILL NOT QUALIFY AS TENANCY BY THE ENTIRETIES.

Many married couples in states that protect tenancy by the entireties assets from the creditors of one spouse or the other have their LLC interests titled jointly as tenants by the entireties.

But they don't realize that there are provisions in the operative documents which are inconsistent and would thus annul tenancy by the entireties characterization and protection.

Common examples of this are:

(a) By the rules of tenancy by the entireties, the joint interest must pass outright solely by the surviving spouse in the event of the death of the surviving spouse. Oftentimes an operational document will provide that on the death of a member, the interest of that member must be sold. Agreements are commonly not drafted to explicitly provide that on the death of a spouse, the other spouse will be the owner of the joint interests, without any inconsistent member agreement provisions.

(b) Similarly, provisions under an operative document which restrict transfers may actually be read to prevent one spouse from owning the entire member interest on the death of another spouse.

(c) While the certificate of ownership may be issued to both spouses as tenants by the entireties, oftentimes the Operating Agreements or Articles of Organization will provide for only one spouse or the other to be an owner.

2. ENTITY DOCUMENTS CAN DISQUALIFY S ELECTION.

Limited liability companies may be treated as S Corporations under the federal income tax law if certain very strict requirements are met and an S election is made.

If the S election is made but the S Corporation requirements are not met, then the company will be taxed as a "C Corporation," therefore exposing properties and income to double tax.

Common causes of this catastrophic treatment are as follows:

(a) An operating agreement does not provide for all income to be distributed pro rata to ownership. Commonly "partnership style" clauses assure members that they will recapture their original investment or have some sort of an income sharing that would reflect a "second class of stock," which is not permitted under the S Corporation Rules.

(b) Although state law permits a limited liability company to have non-citizens, corporations, and other entities own LLC interests, these and certain other entities are not permitted owners of S Corporation stock, and will thus cause disqualification.

(c) Too high of a debt equity ratio could cause disqualification from S Corporation status.

3. FAILURE TO PLAN FOR CASH OR OTHER DISTRIBUTIONS/FAILURE TO USE AN INTERMEDIARY ENTITY.

Oftentimes a client will invest in a multiple member LLC, expecting to have charging order creditor protection, but not thinking through that positive cash flow that the other members will want to assure is distributed will become accessible to a judgment creditor who has a charging order against the LLC. Many clients are well advised to establish a "Family Holding LLC" or a family limited partnership to hold the multiple member LLC interests so that positive cash flow would pass to the family LLC, to be held and reinvested in a protected manner.

Clients who take ownership in a multiple member LLC as tenants by the entireties may wish to do so under a limited liability company or limited partnership owned by the spouses and another family member in order to assure that upon the death of one spouse tenancy by the entireties status would continue, and positive cash flow from the multiple member LLC will thus be protected.

4. FORCED SALE PROVISIONS.

Often well-drafted Operating Agreements will have provisions that would allow any member to force a sale of their member interest at any time or under certain circumstances, such as where another member is selling their interest ("tag along rights"). One advantage of a limited liability company under the laws of most states is that the sole remedy of a judgment creditor is a charging order – meaning that the creditor cannot actually force the sale of the limited liability company interest, become a forced owner, or reach into the limited liability company. A bankruptcy or state court judge may override charging order protection where a debtor member would have the right to simply "cash out" at the time when the judgment creditor has a charging order against the debtor.

8 COMMON LLC PLANNING ERRORS

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

5. WE "FORMED IT OURSELVES" – OR "MY ACCOUNTANT TOOK CARE OF THIS."

While it is possible for any third grader to file a charter to establish the existence of an LLC with state authorities, in the author's experience the vast majority of LLCs that have been established by non-lawyer personnel have been implemented incorrectly. In most states it's the unauthorized practice of law for a non-lawyer to establish and implement a limited liability company for another party. Therefore, the types of non-legal firms that are willing to establish and implement limited liability companies tend to be unconcerned and ignorant, willfully or inadvertently, of the formalities, paperwork, and coordination needed to properly establish, document, implement and operate a limited liability company. Clients who buy $99 "Total Service Incorporation Kits" run the same risks. The slogan "Pay us now or pay us later" comes to mind, but along with that comes "Pay us later and watch your assets looted by creditors and/or the Internal Revenue Service."

6. ASSUMING THAT LIMITED LIABILITY COMPANIES ARE AS WELL PROTECTED AS LIMITED PARTNERSHIPS IN ALL STATES.

Some states provide charging order protection for limited partnerships but not limited liability companies. Clients who have or will have children or other members residing in a state or jurisdiction that may not protect them may want to consider using limited partnerships or other entities in lieu of limited liability companies.

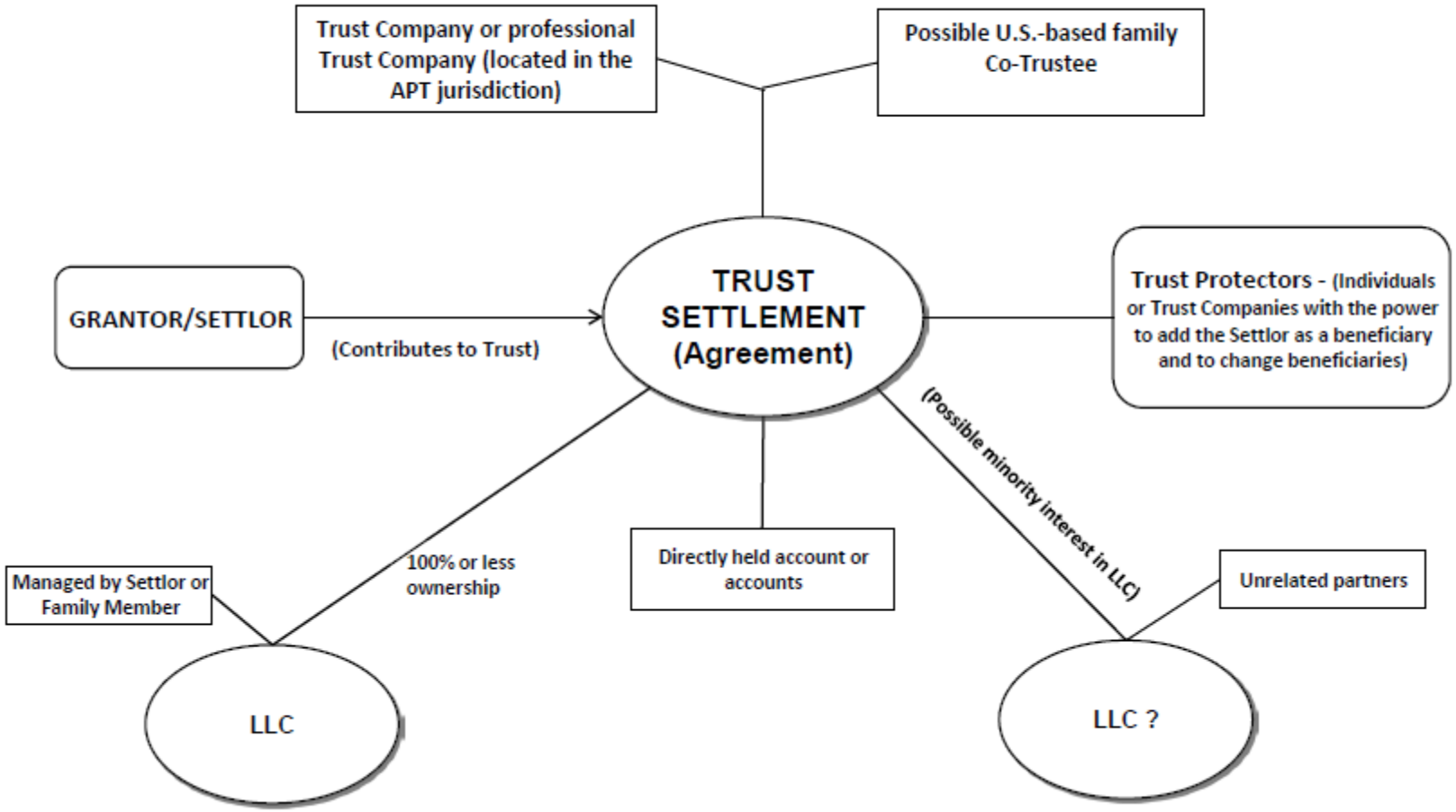
7. FAILURE TO PROPERLY RESPECT FORMALITIES AND THE EXISTENCE OF THE LLC.

It is generally very difficult to "break the corporate veil," but a debtor relying upon a limited liability company arrangement needs to be able to show that the company was the actual owner and operator of the property and/or business, that a charter was properly filed and maintained consistent with operational documents, accounting and tax treatment, and that the arrangement was not in reality a general partnership, a joint venture, or a proprietorship.

8. PERSONAL ACTIVITIES MAY NOT BE INSULATED BY USE OF AN LLC.

Some clients believe that they can carry on consulting, management, or related activities under the name of their LLC and not have potential personal liability. Under general tort law the officer of a company, and the manager of an LLC, will be responsible to third parties for personal negligence. Many clients are well advised to keep a low profile with respect to LLC activities, and to hire third parties to handle management decision making and day-to-day activities.

The Anatomy of a Typical Offshore or APT State Trust Arrangement



The Anatomy of an Asset Protection Trust

1. Trustee – The Trustee holds the trust assets for the benefit of the beneficiaries pursuant to the terms of the Trust Agreement.

2. Trust Settlement – This is the Trust Agreement, and should be drafted by competent legal counsel with an understanding of:

   a) The law of the jurisdiction

   b) United States tax law

   c) Trust and creditor protection law in general

3. Scheduled Beneficiaries – These are the initial named beneficiaries that the trust is established for. Reputable offshore trust companies will require passports, utility bills, professional letters of reference, and sometimes affidavits from each beneficiary when the trust is established.

4. Trust Protectors – These are individuals and/or trust companies who have certain powers over the trust:

   a) To change the Trustee or Trustees – commonly any replacement Trustee must be a reputable trust company or a lawyer practicing in an asset protection trust ("APT") jurisdiction.

   b) The power to add beneficiaries who are not "excluded persons."

5. Flee Clause a/k/a Cuba Clause – A provision that requires the Trustee to move the trust and trust assets to another jurisdiction in the event of a governmental change, or if a judicial challenge to the trust makes it possible that the trust assets would be invaded within a short period of time.

6. United States Judgment – A judgment from a United States Court, which means nothing whatsoever in the jurisdiction where the trust is situsted (located). In most reputable APT jurisdictions, the creditor will have to file a brand new lawsuit in the jurisdiction and obtain a new judgment against the debtor before then attempting to set aside the trust by proving that the trust is an alter ego of the settlor or a beneficiary, or that the transfer to the trust was for the primary purpose of avoiding creditors.

The Anatomy of an Asset Protection Trust

7. APT Legislation – Special laws passed in a number of offshore jurisdictions which make it extremely difficult, if not impossible, for a creditor to pierce an APT:

8. Contingency Fees Not Permitted – In most asset protection jurisdictions, lawyers must charge their clients by the hour, and not on a contingency fee basis.

   a) Belize has no statute of limitations – unless there is a judgment against the settlor in Belize on the day the trust is formed, Belize law will protect the trust.

   b) Court Registry deposit requirement – Nevis requires a 100,000 Nevis dollars ($37,037.04) deposit into the Court Registry before a trust can be challenged. A 100,000 Nevis dollars ($37,037.04) deposit is also required to challenge an LLC. A Nevis trust and LLC challenge will therefore require a 200,000 Nevis dollars ($74,074.07) deposit.

9. Conflict of Interest Considerations – Typically, there are between two to six dozen practicing lawyers in a popular asset protection trust jurisdiction. Most or all of these lawyers have done work for the more popular trust companies, and would therefore have a conflict of interest in pursuing a trust for a creditor – lawyers from outside of the country must therefore come in as "foreigners before the court" to be admitted to practice law there to challenge the trust.

10. Judicial Bias - The asset protection trust jurisdictions derive significant income and lawyer work, not too mention governmental fees that support the local economy. The last thing an asset protection trust jurisdiction economy needs would be a judicial decision that lets creditors into a well intended asset protection trust that was structured in advance.

11. Having Your Cake and Protecting it, Too - The Trustee of the APT can own a 99% limited partnership interest or the ownership of an LLC, with the entity being managed responsibly and transparently by the general partner or manager, which may be the settlor. If and when a challenge might occur, the settlor may transfer control of the subsidiary entity to the Trustee of the trust.

OFFSHORE TRUST – TICKING TIME BOMBS

- Not reporting the trust and trust activities on a Form 3520, upon inception, Form 3520A each year thereafter, TD F 90-22.1 (FBAR) forms annually, and compliance with FATCA (Foreign Account Tax Compliance Act) reporting requirements.
- Not reporting trust income or not reporting income that goes into the trust.
- Being dishonest with any potential creditor, the IRS or any taxing authority with respect to the trust or its underlying operations.
- Not reporting the funding of the trust as a completed gift for gift tax purposes if the grantor has not retained a power with respect to the trust that would cause its funding to be an incomplete gift (such as the testamentary power to appoint trust assets) even if the trust will be subject to estate tax by reason of such power.
- Failure to provide that upon death, any marital deduction devise must override any discretionary power of the trustee or trust protectors to deprive the grantor's spouse of sole lifetime beneficiary/QTIP trust or outright payment rights.
- Getting the trust assets stolen by the trustee.
- Being dishonest with any court with respect to the trust or its operations.

Avoid Theft

- It is vital that clients utilize reputable trust companies and structures that assure that the assets they place under an APT will not be stolen.
- Sometimes two trust companies from different jurisdictions will serve as Co-Trustees under the trust agreement, or a lawyer or other fiduciary may serve so that two signatures and collusion would be required before monies held in an offshore account could ever be stolen.
- Some jurisdictions, like the Isle of Man and Jersey in the Channel Islands allow for the law of a co-trustee's jurisdiction to apply.
  - There are many well funded and reputable trust companies in the Isle of Man and Jersey willing to serve as managing Co-Trustee of APT formed under the laws of a more recognized APT jurisdiction.

Considering Offshore or Domestic Creditor Protection Trusts

SHOULD I STAY OR SHOULD I GO?

FACTOR	NEVADA	ALASKA	ISLE OF MAN/JERSEY (Channel Island)	NEVIS	BELIZE
Asset protection law – Statute of Limitations	See Page 46 Strong/2 years – BUT full faith and credit issue	Strong/4 years – BUT full faith and credit issue	No statutory limitation on fraudulent transfer – unless import law of jurisdiction of a Co-Trustee	Strong/2 years	Strong/1 day statute!
Approximate minimal cost to open trust and annual fees.	$250 to open $1,500 per year thereafter	$750 to open $3,000 per year thereafter	$1,600 to open $1,600 - $3,300 per year thereafter	$1,750 min to open $2,500-$5,000 per year thereafter depending on value of trust	$700 fee to register; $1,100 - $2,300 per year thereafter
Risk of theft.	Very low.	Very low.	Should be very low.	Low, if you use a safe trust company.	Not sure.
Use of subsidiary entities permitted- settlor can be Manager of entity.	YES	YES	YES	YES	YES
Reputation with US courts.	Does the judge gamble?	Does the judge like cruises?	Does the judge know European history?	Does the judge like Four Seasons Hotels or Alexander Hamilton (born there).	Has the judge read SEC v. Banner Fund International, or like barrier reefs?
Commonality of use of Swiss or Bermuda depositories.	New concept	Not common	Common in these islands for centuries	Common	Common

Considering Offshore or Domestic Creditor Protection Trusts

SHOULD I STAY OR SHOULD I GO?

FACTOR	NEVADA	ALASKA	ISLE OF MAN/JERSEY (Channel Island)	NEVIS	BELIZE
Use of Trust Protectors.	New concept	New concept	Since the 1700s	Normal	Normal
Quality of service.	High	High- time zone difference	British-style/time zone difference	Small town- usually good.	Mayberry RFD
Allows importation with statute of limitations tolling from inception of trust at where it was imported from?	YES if original situs has substantially similar spendthrift laws	YES	The Statute of Elizabeth provides that fraudulent transfers should be void, not subject to any limitation period	YES	YES
Toggling off is possible?	YES	YES	NOT unless there is one or more U.S. beneficiaries	NOT unless there is one or more U.S. beneficiaries	NOT unless there is one or more U.S. beneficiaries
Provides for contingency fee payments? - Number of lawyers	YES About 10,000 attorneys	YES About 4,000 attorneys	NO, about 170 attorneys in Isle of Man, and 150 in Jersey Most lawyers are conflicted	NO, about 100 attorneys Most lawyers are conflicted	NO, about 150 attorneys Most lawyers are conflicted
Rule Against Perpetuities	365 years	1,000 years	150 years	Does not apply	Abolished

Do Domestic Asset Protection Trusts Work?

- Nevada, Alaska, Delaware, South Dakota and other states have asset protection trust statutes. But the Full Faith and Credit Clause of the U.S. Constitution provides that a judgment issued by the court in one state will be respected by the court in other states.
- There are many questions regarding the effectiveness of domestic APTs. The case law is not yet fully developed on the question of whether the law of a foreign jurisdiction will apply for the determination of whether a creditor protection trust will shield trust assets from creditors of the grantor who is also a beneficiary.
  - *Hanson v. Denckla*, 357 U.S. 235 1958 – the law of the state where the trust administration occurs will be determinative.
  - *In re Portnoy*, 201 B.R. 685 (Bankr. S.D.N.Y. 1996) and *In re Brooks,* 217 B.R. 98 (Bankr. D. Conn. 1998) – assets placed in offshore APTs were not excluded from the debtor's Bankruptcy estates.
  - *Dahl v. Dahl*, 2015 UT 23, Supreme Court of the State of Utah (January 30, 2015) – Under Utah law, wife had an enforceable interest in a NV APT that husband created because the trust was revocable regardless of stating in the trust language that the trust is irrevocable. The language that the Court based its reversal upon stated that, "Settlor reserves any power whatsoever to alter or amend any of the terms or provisions hereon."
  - *In re Mortensen, Battley v. Mortensen,* (Adv. D.Alaska, No. A09-90036-DMD, May 26, 2011) – assets situated in Alaska were placed in an Alaska APT. The Court held that the exemptions would be determined under state law rather than federal law because the state law is applied to determine if the trust was established correctly.

DAPTS ARE STILL A VIABLE STRATEGY:

Why the Wacker case did not eliminate or drastically diminish DAPT Protections

Excerpt from Leimberg LISI Newsletter # 363, thanks to Steve Leimberg. Full copy available upon request.

Good Reasons That Domestic Asset Protection Trusts Are Still A Viable Strategy by Alan Gassman and Kateline Tobergte

"On March 2, 2018, the Supreme Court of Alaska confirmed a judgment that stated that an Alaska statute granting exclusive jurisdiction over trusts was invalid. The court ruled that Alaska is free to limit its own courts' jurisdiction, but cannot deprive other states' courts or the federal government of jurisdiction. There seems to be the misconception that this decision that Alaska cannot strip other states' courts of jurisdiction is the same as deciding that any court has jurisdiction. This is not the case. A court must still have personal and subject matter jurisdiction for a party to bring a claim against a trust.

In our opinion, the *Tangwall* case that came out of the Alaska Supreme Court does not affect the validity or security of DAPTS. The significance of that case is limited to the limits already set by Tennessee Coal and Marshall: A state cannot use a statute to limit other states' or federal rights to hear a case, even if the state created the right of action that gave rise to that case. For a non-DAPT state to interfere with a trust in a DAPT state, the non-DAPT state court must have jurisdiction over the trust or the trustee, and the non-DAPT state's ability to enter judgments against the trust is limited by the extent that the state court has jurisdiction. Non-DAPT states cannot simply override DAPT state protections just because they have conflicting statutes. This means that Florida cannot override or invalidate an Alaska DAPT unless Florida courts can establish jurisdiction over the trust assets or the trustee.

Wacker Did Not Do To DAPTS What Many Say It Did

- Misconceptions:
  - *Wacker* has destroyed DAPT protection. Courts in non-DAPT states will not recognize or enforce DAPTs.
  - Invalidating exclusive jurisdiction provision opens the DAPT to attack in non-DAPT states.
- Why this is incorrect:
  - Courts must still have personal and subject matter jurisdiction to hear a case as seen in *Hanson v Deckla*. Property held in the Alaska DAPT was located in Montana giving Montana jurisdiction.
  - This just reaffirmed the decisions under *Tennessee Coal* and *Marshall regarding Full Faith and Credit*.

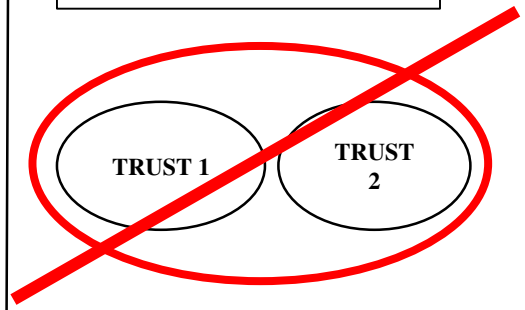
Hanson v. Denckla, 357 U.S. 235 (1958)

- Trust established in Delaware
- Settlor later became domiciled in Florida where she executed a will and appointed $400,000 to the Delaware trust.
- Florida ruled the appointment was Testamentary and invalid under FL law.
- Before the FL decision was entered, DE court ruled the appointment was proper.
- The Supreme Court held:
  - FL did not have personal or in rem jurisdiction
  - The fact that the DE decision affects FL's application of FL law did not give FL jurisdiction
  - The DE decision was controlling.

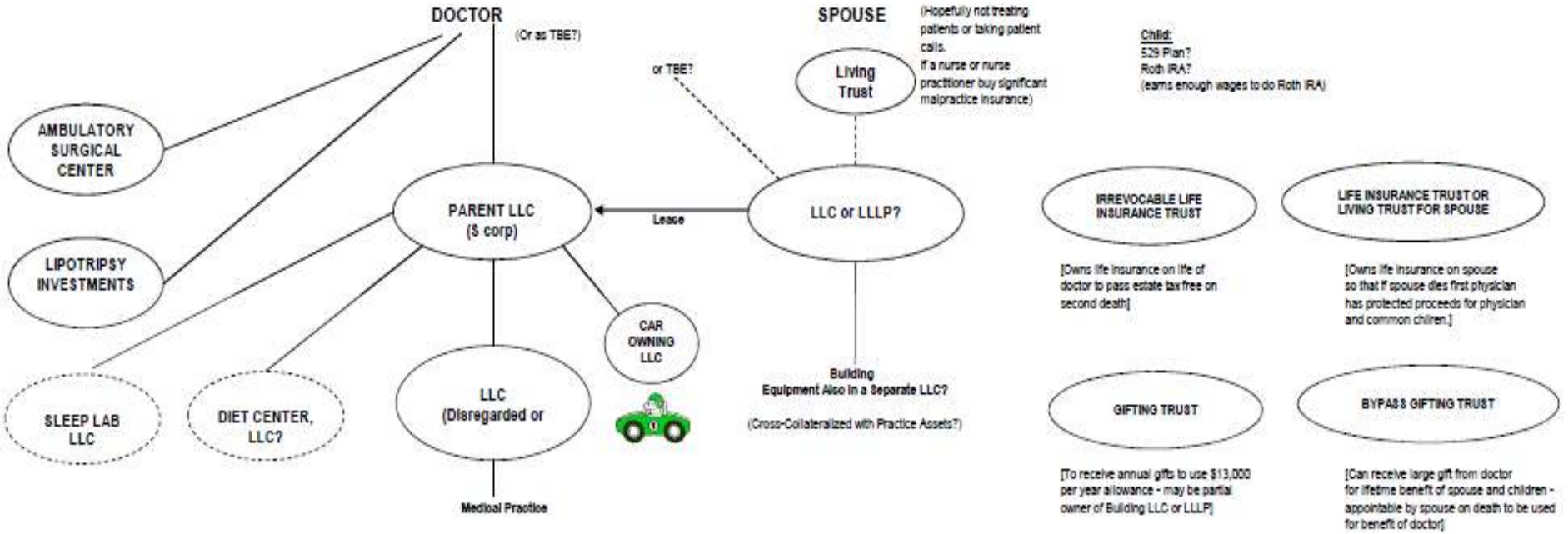
DAPT Protections:

- **Jurisdiction**: Non-DAPT state courts must have jurisdiction to apply their laws to an issue involving a DAPT.
- **Settlement**: Creditors tend to settle rather than challenge a DAPT because bringing a claim can be very expensive with limited remedy options increasing the risk of not getting paid.
- **Flee clauses**: Allows the trust to move offshore increasing costs to creditors wishing to bring a claim. They also are useful for estate tax planning.
- **Charging Orders**: The sole remedy under most states' LLC laws against a debtor's interest. Acts like a lien and locks the assets instead of the creditor being able to seize the assets.
- **Hybrid DAPTS**: Grantor is not a beneficiary (so creditors cannot reach the assets), but can be added at the discretion of the Trust Protectors, who are not fiduciaries. Some require "acts of independent significance" such as divorce or insolvency before the settlor can be added.

Florida and APT Jurisdiction Trust Varieties

INCOMPLETE GIFT TRUST	FLORIDA COMPLETE GIFT TRUST	APT COMPLETE GIFT TRUST	Reciprocal Asset Protection Trusts
To preserve assets for marriage, management , or otherwise. Grantor retains power to prevent distributions and testamentary power to appoint how assets pass on death - may be limited to not being exercisable in favor of creditors or creditors of estate, and exercisable only with approval of a non-adverse party not acting as a fiduciary.	Use Crummey Power for annual exclusions, or part of Grantor's exemption amount. Held for health, education, and maintenance of individuals other than the Grantor. Complete gift to fund - will not be included in Grantor's estate. Grantor/Contributor cannot be a beneficiary.	Use Crummey Power for annual exclusions, or part of Grantor's exemption amount. Held for health, education, and maintenance of individuals other than the Grantor. Complete gift to fund - will not be included in Grantor's estate. Under PLR 200944002, Grantor may be a discretionary beneficiary.	 Beware the reciprocal trust doctrine, both under estate tax law and creditor protection law - see Gideon Rothschild's article entitled *Creditor Protection - - The Reciprocal Issue for Reciprocal Trusts (It's Not Just About Estate Taxes).* http://www.mosessinger.com/site/files/creditorprotectionreciprocaltrusts.pdf

SINGLE PHYSICIAN OWNED MEDICAL PRACTICE



Key Practice Creditor Protection Strategies

1. Keep valuable assets outside of the practice entity.
2. Let creditors of the practice entity have a first lien on lienable assets.
3. Let the practice entity guarantee debt owed by other entities and pledge its assets as collateral for the debt.
4. Let the practice entity enter into long term leases that allow landlords to accelerate rent owed in the event of insolvency, and give landlords a lien on practice assets.
5. Give shareholders a lien on practice assets to secure their right to deferred compensation.
6. Consider New Parent F Reorganization.
7. Consider an ELOPE system to protect letters of protection or large accounts receivable.
8. You cannot have too much insurance.
9. Consider keeping separate entities, having separate functions and assets, while also complying with medical billing and associated laws.

Practice and Business Entities and How They Can be Taxed

REGULAR CORPORATION OR PROFESSIONAL ASSOCIATION

1. **Taxed as S corporation or C corporation.**
2. **S corporations pay no tax unless they used to be a C corporation and certain circumstances exist.**
   The income and deductions of an S corporation flow through to the shareholders pro rata to ownership.
3. **A C corporation is taxed as a separate entity and if it is a professional service company, all net income is taxed at the highest bracket (39.6%).**
4. **No charging order protection.**

LLC OR PL OR LIMITED PARTNERSHIP OR LLLP

1. **Only 1 member- disregarded for federal income tax purposes.**
   But may have a Taxpayer Identification Number.
2. **If 2 or more members – taxed as a partnership. A partnership is taxed in a manner similar to an S corporation, but with major differences.**
3. **Can elect to be taxed as an S corporation or a C corporation for federal income tax purposes.**
   To have corporate tax treatment a Form 8832 must be filed with the IRS.

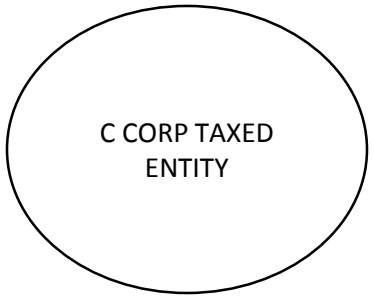
GENERAL PARTNERSHIP OR LIMITED LIABILITY PARTNERSHIP (LLP)

1. Can be disregarded if considered to have one member (such as if an individual owns 50% and his or her revocable trust owns 50%)
2. Taxed as a partnership if 2 or more members.
3. No charging order protection.

No filing required for general partnership.

Basic Income Tax Operation of Each Type of Entity

Shareholder
(Dividends are taxed)



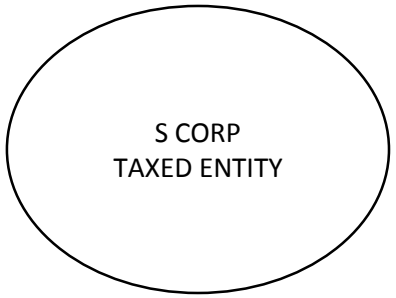
Corporate level tax – revenues minus deductible expenses.

Dividends are not deductible expenses.

May deduct healthcare and disability insurance expenses under certain circumstances.

In the highest individual tax bracket on the first dollar of income if this is a personal service company.

Shareholder
(Dividends are not taxed)



Income and deductions are computed and then go on income tax returns of owners by K-1 reporting.

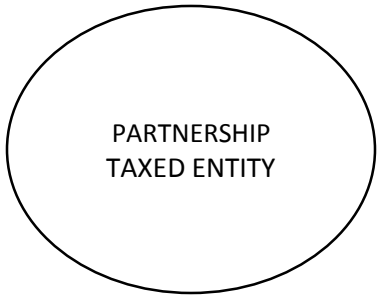
There can only be one class of stock, but voting/non-voting is permitted.

Contribution of appreciated assets can trigger tax unless the 80% rule is followed under IRC Section 351

Income is triggered if an appreciated asset or accounts receivable are transferred from the S corporation to shareholders unless it is deductible compensation.

Special rules apply if an S corporation used to be a C corporation. This can cause double tax.

Partners
(Individuals, S corporations or otherwise)
(Distributions are not taxed)



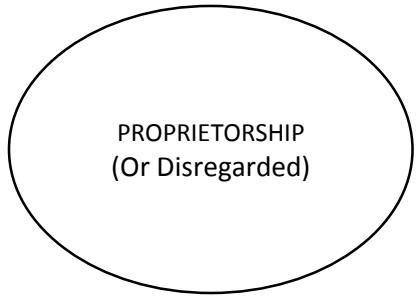
Income and deductions are computed and then go on income tax returns of owners by K-1 reporting – no entity level tax.

Distributions to partners are usually subject to employment taxes

Compensation paid to partners is often called "guaranteed payments" and reduces partnership income

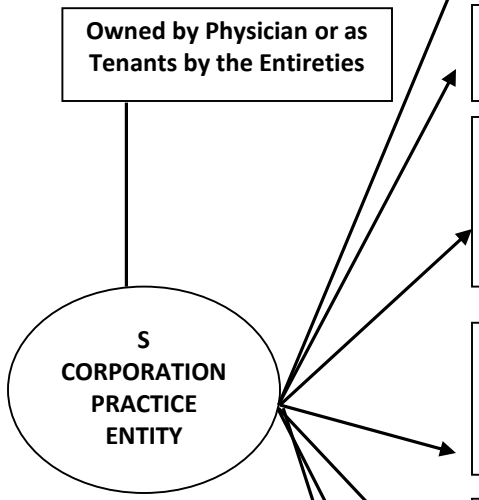
Typically no income tax is triggered when appreciated assets are contributed to the partnership in exchange for a partnership interest

Typically no gain is triggered when the partnership transfers appreciated assets to its partners to redeem their ownership interests.



All income and deductions are shown on individual's Form 1040 Schedule C – subject to employment taxes of 12.4% on the first $113,700 of income, plus the 2.9% Medicare tax, making for a 15.3% tax thereon, plus the 2.9% Medicare tax on income from $113,700 and an additional 0.9% Medicare tax to the extent of self-employment income that exceeds $200,000 for a single taxpayer and $250,000 for a married taxpayer.

Choices and Factors with Respect to Allocation & Payment of Medical Practice Income for the Solo Practitioner

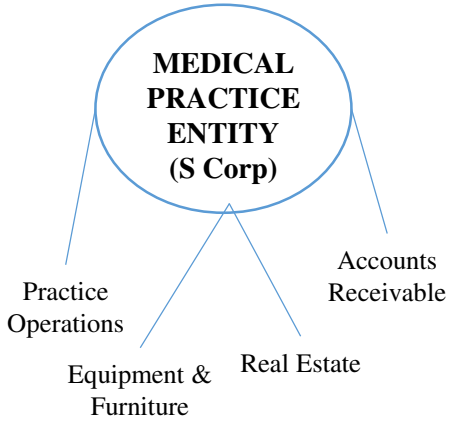


PAYEE	CREDITOR PROTECTED IN FLORIDA?	TAX/EXPENSE	NOTES AND OBSERVATIONS
Pension Plans	Yes	Costs for staff and to maintain plan – spouse on payroll to justify additional contribution.	
Children on the Payroll	Yes – If goes to Roth IRA in the name of the child.	Child in lower rate (Lowest bracket – 10%) but 15.3% employment taxes apply,.	Can do this for parents and in-laws as well!
Wages paid to Doctor	If Head of Household, Florida Statute 222 may apply – deposit directly into protected account.	15.3% employment taxes on first $127,200, and then 2.9% over $127,200 plus .9% tax on wages exceeding $200,000 for single person and $250,000 for married joint filers.	Up to $265,000 countable for pension contribution purposes.
Dividends to owner of entity.	Only if owner is protected – such as tenants by the entireties or a family limited partnership owning the entity.	Not subject to payroll taxes – but could be recharacterized by IRS.	Not creditor protected as wages.
Spouse on payroll.	Yes, if spouse is safe.	15.3% employment taxes on first $127,200, and then 2.9% over $127,200 plus .9% tax on wages exceeding $200,000 for single person and $250,000 for married joint filers. .	
Rent	Yes, if renting entity is protected. They protect PA assets if landlord has lien to enforce rent on long-term lease.	7% sales tax – after tax cost is 4.55%. Subject to the 3.8% Medicare tax for single taxpayers with MAGI over $200,000 and MFJ taxpayers with MAGI over $250,000.	May be worth paying full retail rent if owner or part owner of building or equipment are children and/or bypass trust for spouse to facilitate estate tax savings.
Interest owed to related parties.	If related party is protected.	Deductible as interest – receiving party pays interest income.	Why pay a bank 7% with personal guarantees when a family limited partnership or trust for the children might loan the money without guarantees at 14% and take a lien on all practice assets.

NEW PARENT F REORGANIZATION
SHOWING ACCOUNTS RECEIVABLE FACTORING ARRANGEMENT

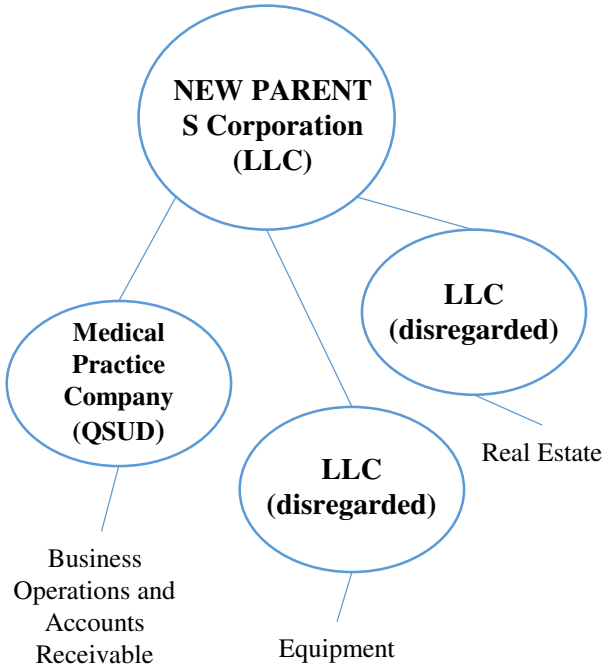
1. Physician or Physicians Owns Medical Practice Entity

Shareholder or Shareholders



Initially, we have a medical practice entity where valuable assets are exposed to potential malpractice and other entity liabilities.

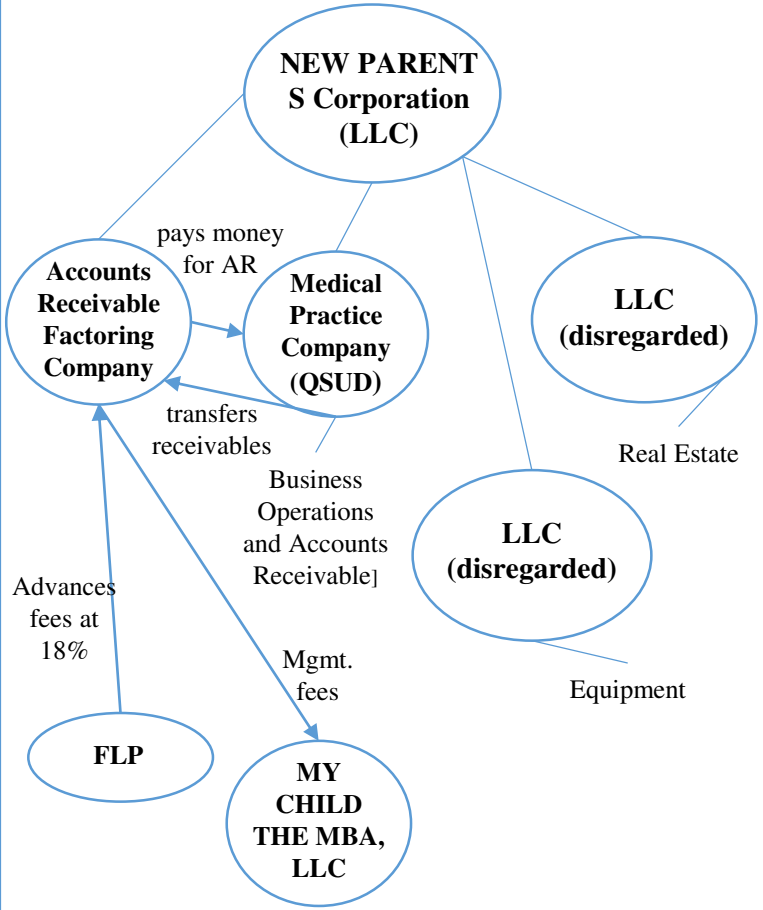
2. Shareholder (S) (and spouses?)



[Retains initial tax identification number and billing identity]

A new S Corporation can be established to own the stock of the medical practice entity, which becomes a qualified subchapter S subsidiary. It can then transfer valuable assets income tax free to other LLCs owned by the same new parent company to protect assets from future creditors of the medical practice entity.

3. Shareholder (S) (and spouses?)



To obtain income tax planning advantages for affiliated family members and entities, a separate accounts receivable factoring company can be established to work along the lines of the Extended Letter of Protection (ELOPE) System shown in other materials.

THE BIGGEST MISTAKES THAT DOCTORS MAKE WITH RESPECT TO MANAGING THEIR MEDICAL PRACTICES AND INVESTMENTS

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

As published in Leimberg Information Services, Inc. (LISI) Estate Planning Newsletter #1465 (May 20, 2009) Copyright 2009.

Alan Gassman, a partner in Gassman, Bates & Associates, P.A., and a frequent LISI commentator, has represented several hundred medical practices through the years. Alan practices business, estate planning and tax law in Clearwater, Florida.

A thriving and successful medical practice can quickly be pulled under by one catastrophic incident that destroys its financial solvency, its credibility, or both. How and why do such catastrophes occur, and what are their most common forms?

EXECUTIVE SUMMARY:

This commentary reviews ten avoidable mistakes that can be the cause of fatal errors for medical practices and investment portfolios.

COMMENT:

While different physicians and groups of physicians tend to make more mistakes in one area than another, each common mistake area should be reviewed and understood with appropriate advisors. These common errors, which are described in more detail below, are as follows:

1. Failure to Maintain and Appropriately Use Independent Professional Advisors.
2. Failure to Maintain Medical Law Compliance.
3. Failure to Maintain Proper Malpractice Insurance.
4. Failure of Multiple Physician-Owned Practices to Have Appropriate Buy-Sell and/or Shareholder Agreements in Place.
5. Failure to Procure and Maintain Proper Insurances.
6. Failure to Make the Medical Practice and Doctor Judgment-Proof.
7. Failure to Theft-Proof the Practice's Monies and Accounts Receivable.
8. Using Greedy Investment Advisors.
9. Unbalanced Investment Portfolio.
10. Doing Business With the Wrong People.
11. Failure to Have Anyone in the Practice Pay Attention to Contracts with Third Parties.

1. Failure to Maintain and Appropriately Use Independent Professional Advisors. *Many of the calamities described below will be avoided if a medical practice has experienced advisors on board. The practice should consult with its advisors when making major practice decisions, and also periodically confirm that appropriate procedures and safeguards are in place.*

(a) CPA: Quite often the quarterback of the advisor team will be a good, caring Certified Public Accountant who does extensive medical practice work. CPA's are often well versed in investments, business matters, and methods of theft- proofing a medical practice from a financial standpoint.

CPAs should prepare quarterly or monthly financial statements for the medical practice; these statements should involve a review of accounts receivable, cash flow and general practice financial information.

(b) Attorney: An experienced lawyer who represents a number of medical practices should have sufficient experience to help physicians avoid terrible problems before they occur.

Just as physicians advise patients to have an annual check-up, and may wisely require this before prescriptions are renewed beyond 12 months, a medical practice client should confer with its lawyer on a periodic basis. Commonly the primary lawyer for the practice will refer matters to appropriate sub-specialist attorneys in a number of different areas. Often this happens in conjunction with a CPA meeting.

(c) Other Advisors: Other advisors commonly and appropriately used by a medical practice group will include (i) a qualified pension plan advisor, who is also preferably an actuary, as well as (ii) a banker who is knowledgeable as to practical business expense and loan-associated planning, and (iii) a reputable and conservative financial advisor or advisors who assist with pension planning, various insurances, and other practice-associated financial instruments.

Good advisors should be honest and always let the physician and the rest of the team know about questions, concerns, or the need to bring in additional experts to handle any particular matter or situation. Advisors who show up to sell a single product or scheme commonly cause problems, as described in below.

2. Failure to Maintain Medical Law Compliance. A great many physicians are annihilated financially when Medicare and/or private insurance carriers request hundreds of thousands of dollars in refunds because the physician has used inappropriate billing practices or financial arrangements with third parties. In many cases these problems are reported to the government by employees who can earn a 15% "whistle-blower fee."

Many physician clients simply do not realize that they use improper coding, do not maintain sufficient patient file back-up, or bill for items that are inappropriately unbundled or altogether un-billable.

Several years ago, the concept of a "medical practice compliance audit" was in vogue, and many professionals, in the opinion of the author, significantly over-charged physician groups for "practice audits." Such audits extended far beyond a reasonable review of billing, patient file documentation, and third-party financial arrangement review.

Reasonable and periodic practice maintenance and reviewed by trusted medical consultant advisors eliminates the need for such a costly venture. In the author's experience, most medical practices benefit from hiring an independent consultant to come into the practice, perhaps annually, to spend a day randomly reviewing patient charts and the billing and collection processes associated therewith.

Quite often a good consultant can spot billing opportunities where the practice is undercharging or not knowing to charge for certain services. An independent consultant can also be a tactful go-between to let certain members of a medical practice know that their file documentation is not sufficient. Such corrections are best conveyed by a neutral third party.

Consultants should be hired by a lawyer on behalf of the medical practice so that any problems they may discover can stay confidential under the attorney-client privilege to the extent possible.

If and when the government criticizes a medical practice's coding, file documentation or other billing procedures, it is very helpful to be able to show that the practice conscientiously hired and followed the advice of a reputable billing and coding consultant on a periodic basis.

Many physician groups are also unfamiliar with or intentionally disregard rules relating to arms length leases, compensation arrangements, and also the ability to refer tests within a group medical practice only if certain rules are followed. The author has had law-abiding and well-meaning physician clients arrested in their lobbies by the FBI as a result of being in business with the wrong people at the wrong time.

Doctors can rest assured that any "scoundrel" that they have legitimate or questionable business relationships with will turn them in to get amnesty if and when approached by law enforcement, even if the doctor did nothing wrong. When law enforcement comes knocking the doctor should immediately have appropriate sub-specialty lawyers contact law enforcement on his or her behalf. Neither the doctor nor his or her staff should directly speak with any law enforcement officers at any time on any topic.

3. Failure to Maintain Proper Malpractice Insurance. While malpractice insurance is not inexpensive, it is necessary in order to protect physicians from the significant legal fees, expert witness costs, and liability exposure associated with defending lawsuits. The proliferation of the personal injury lawyer industry shows no sign of slowing down, and a sympathetic jury system, coupled with experts willing to testify that a doctor committed malpractice under complicated circumstances that a jury can never understand provides good cause for maintaining appropriate malpractice insurance coverage.

Many advisors and clients believe that a practice need only maintain the lowest limits of liability coverage because "they will always settle for your limits," but the author has found that in many cases plaintiffs will not settle for low limits of medical malpractice insurance liability where there are other significant assets exposed. Physician clients will sleep better and have a greater sense of financial security, as well as significantly less personal exposure, when they have higher levels of liability insurance than the legally required minimum.

Many physicians will obtain malpractice insurance coverage from low-cost carriers that turn out to be infirm and go bankrupt, leaving doctors high and dry to defend their own claims and without any coverage whatsoever for legal and expert expenses.

Any opportunity to pay significantly less than the going rate for malpractice coverage should be reviewed carefully with the above concerns in mind.

Also, the income tax laws permit a medical group to form its own "captive insurance carrier" and deduct premiums paid to the carrier company. Under the tax law the carrier company may not have to include premiums received as income unless or until it is determined what portion of the premiums will be used to pay claims as expenses and what portion of the premiums will be profits. Profits taken out later may be taxed at favorable capital gains rates.

Nevertheless, there is a significant economic risk taken since the carrier could "go under" if there are extensive claims, and when there are multiple doctors being insured by the carrier, one or two doctors who make a lot of mistakes could cost all of the equity for the other doctors.

Further, unlike conventional malpractice insurance, which requires a carrier to offer tail malpractice insurance coverage at the request of each doctor, captive insurance carrier reinsurance contracts will commonly not bind the reinsurance company to even renew the coverage, let alone provide a tail policy on termination, leaving an entire group of doctors without any coverage whatsoever. Successor carriers will not provide tail coverage for periods of time that no other carrier is on the hook for.

The laws of most states require that malpractice insurance be provided by a state-registered carrier. Doctors who have malpractice insurance furnished by an unregistered carrier may be considered to be "going bare" under state law, and may therefore have to notify patients that the doctor is "bare." A possible loss of license can occur if a doctor cannot satisfy a claim by reason of not having malpractice insurance or the financial wherewithal to pay a claim.

Many doctors are not aware that for a small additional premium they can have a separate "corporate" malpractice insurance policy issued by the same carrier that provides individual policies that covers the medical practice company in order to effectively double the limits of malpractice insurance that would be available to pay on a claim, and to assure that the company will have coverage if one of the doctors leaves and refuses to buy tail malpractice insurance.

Also, nurse practitioners and registered nurses can often qualify for insurance with high limits of liability for very low cost. Many physicians will not treat certain types of high-risk patients unless they at all times have a nurse practitioner in the room with them to make sure that there is plenty of coverage, witnesses to what is said, and appropriate follow-up.

4. Failure of Multiple Physician-Owned Practices to Have Appropriate Buy-Sell and/or Shareholder Agreements in Place. Many successful medical practices are run on a handshake or a long-forgotten and now archaic agreement, but when problems or changes in circumstances arise the results can be catastrophic- and quite lucrative for the legal profession.

For the sake of example, assume that Doctor A and Doctor B are lifelong friends who have practiced together 25 years and share 50% each ownership of a medical practice without current legal agreements. Their spouses have also been best friends.

They have always worked approximately the same and have always been paid the same. A couple of years ago they were offered $3,000,000 for the practice, which involved signing 5 year non-competes and 5-year employment agreements. They also own the practice real estate together in a separate company under which they have signed a $2,000,000 mortgage on real estate now worth only $1,500,000.

If Doctor A becomes disabled, they may not be able to agree on how much Doctor B should be paid to administer the practice. Disagreements may also arise regarding the hiring of a replacement doctor or doctors.

They may also not be able to agree on a price or terms for Doctor B to buy Doctor A out.

Often disabled physicians believe they will be returning to work. Meanwhile, their partners see the writing on the wall and take a more skeptical view of their capacity for recovery. The practice can be significantly damaged during this period of time until the disabled physician's status on returning to work is absolutely confirmed.

What if Doctor A becomes a drug addict or begins having an affair with medical practice personnel that could cause obliteration of the practice? How can Doctor B force Doctor A to leave, or to even behave? How can Doctor B protect the practice and himself from responsibility for Doctor A's misconduct?

What if Doctor A dies? Doctor A's widow may believe that the practice is worth $3,000,000 and will be voting Doctor A's stock unless or until she is bought out. How can Doctor B convince Doctor A and her lawyers and valuation experts that the practice has lost significant value because of Doctor A's death? How can Doctor B run the practice if Doctor A's widow will not agree to any significant changes in situations where such changes become necessary?

How can Doctor B attract a new doctor to the practice if he has to disclose that he is not getting along with the 50% widow owner of the practice?

The list of examples goes on and on. It does take time and money to put together an appropriate Buy-Sell/Employment/Shareholder document package. Almost no two are the same as circumstances change. However, it is a valuable investment that every practice should make.

In addition, applicable state law and/or Medicare law often requires that compensation be based upon methods determined in advance that do not take into account the referral of patient services. As mentioned under number 2 above, the referral of a patient within a group practice for certain testing or other "designated health services" under the Stark Law can be a felony unless there is a properly documented method of sharing that qualifies under the Stark Laws. Failure to have this in writing in advance of a particular calendar quarter can constitute a felony offense.

5. Failure to Procure and Maintain Proper Insurances. There are myriad insurances required to appropriately safeguard a medical practices from the normal risks of doing business, particularly in view of the American trial system.

Fortunately most of these risks can be reasonably handled on an affordable basis, assuming that proper coverage is in place.

The most important coverage is clearly malpractice insurance, which is addressed below as a separate section, but other insurances which are essential to the well-being of physicians and their medical practices include:

1) disability insurance,
2) overhead insurance to handle practice expenses during a period of disability or in the event of a natural disaster such as a hurricane or acts of terrorism,
3) liability insurance to cover non-malpractice obligations, such as if patients or others hurt themselves in the parking lot or fall on slippery areas in the office,
4) workers' compensation insurance to protect the practice against state laws that can require lifetime support and/or significant monetary payments to be made to an employee injured in the course of employment, and
5) unowned automobile liability insurance to insure against the liability that occurs to a medical practice if any employee is in an automobile accident while running errands or otherwise working in the course of medical practice business.

Individual automobile liability policies should also be reviewed to ensure that each physician has coverage for medical practice-related driving. Many personal policies will not cover business driving without additional policy riders. The author commonly recommends at least $3,000,000 - $5,000,000 worth of umbrella liability coverage to cover all business and personal driving, and driving by others who might use the doctor's car.

There are thousands of disabled physicians in the United States now living on disability insurance. The author has more than 15 clients who have been able to "retire" on their disability insurance. This explains why the rates are so high to procure such coverage, but also why having good coverage is a necessity rather than a luxury for physicians who do not have adequate retirement savings to support themselves and their families for their remaining lifetimes.

Sometimes individual health insurance policies will not cover on-the-job injuries under the presumption that a doctor will be covered under workers' compensation for on-the-job injuries. Doctors who do not have workers' compensation insurance, which is often waived to save money, should check their health insurance policies to make sure that they are covered for on-the-job injuries.

6. Failure to Make the Medical Malpractice and Doctor Judgment-Proof. There are many ways that a medical practice and a doctor can work to make themselves a less attractive target for a plaintiff's lawyer.

Often the practice incurs debt in its name, and the lender or lenders have liens on practice and personal assets that must be paid before a plaintiff is able to levy upon a doctor or practice. Also, valuable assets like real estate and furniture and equipment can be owned by a separate entity that would lease those assets to the medical practice to make them inaccessible, or at least less accessible, to a malpractice claimant.

It is also important to ensure that each physician in a group has his or her personal creditor protection planning properly in place so that a plaintiff lawyer can be led to settle within policy limits if and when a catastrophic lawsuit occurs.

Because of state and bankruptcy law fraudulent transfer law statutes, it is often crucial that creditor protection planning for the medical practice entity and the doctors occur well before any problems arise.

When a serious lawsuit occurs, the doctors should keep in mind that the lawyer hired by the insurance company does not necessarily have duty of absolute loyalty to the doctor. The malpractice insurance carrier selects and pays the lawyer.

There are often circumstances whereby an independent lawyer should be hired by the doctor to encourage the insurance carrier to settle a claim within policy limits when the opportunity arises, in order not to risk the doctor's personal and practice assets to an "excess verdict." Many states have laws that will require an insurance carrier to be responsible for any excess verdict if proper demand has been made upon the carrier when it had the opportunity to settle within policy limits. These are called the "bad faith" rules.

7. Failure to Theft-Proof the Practice's Monies and Accounts Receivable. The author regularly receives at least one phone call per year from a very upset physician who has had tens of thousands of practice dollars stolen by an employee. This employee has often been with the practice many years, and most of the time is the most trusted person in the practice other than the physicians themselves. As such, the employee is able to obtain physical possession of checks made payable to the practice by one or more payor sources and/or has written checks on the practice accounts for bogus expenses.

Over the years, the author has seen medical practices unwillingly and unwittingly pay credit card expenses, electric company expenses, car payments, and even home mortgage payments for a medical practice employee. When the circumstances are reviewed, they reveal that most of these situations would have been avoidable with proper supervision and use of appropriate safeguards.

Additionally, money is often stolen from practice accounts when large projects such as buildings, construction, or similar matters are administered by a person who signs the checks and/or administers the checks and invoices for a busy physician.

Most of the time the theft is carried out by the most trusted office manager without any assistance from another employee.

It is a very basic accounting system principle that the person or people who physically open the envelopes containing checks payable to the practice record the checks onto a log and ensure that the checks are properly deposited. These deposits are then reported to a separate employee who has the ability to record the payments in the practice's computer system.

It is a fatal error to allow one individual to have physical possession of checks and also the ability enter payments or write-offs onto the practice's billing computer system. Even spouses have been known to steal from medical practices, especially when there are multiple partners.

Many practices use a post office box for checks to eliminate the risk of someone being able to "snatch a few checks from the mail" before they can be posted. Many banks offer check-depositing services and addresses that can be used as well. These are often known as "lock box" arrangements.

Larger practices can have someone from their CPA firm visit the practice on an annual basis without advance notice to the practice personnel. This demonstrates to employees that there is some degree of monitoring going on and can discourage practice theft.

8. Using Greedy Investment Advisors. The number of different investments and life insurance and annuity arrangements that can be sold to doctors and their practices in the financial world. The quality of each particular investment vehicle can vary dramatically in terms of actual financial safety, conservative versus aggressive orientation, likelihood of being acceptable to the IRS in the event of an audit, and as to the amount of commissions paid to advisors who may suggest such arrangements.

Expecting a physician to read a prospectus or to understand a complicated tax maneuver is like expecting a lawyer or a CPA to read an EKG- it is easy to be fooled!

If the advisors are earning a significant portion of the amounts invested as compensation, a degree of manipulation, non-disclosure, exaggeration or outright lying can take place.

In the pension world, actuaries and many CPA firms who practice extensively in the retirement plan arena can yield the great results for clients. Pension and profit-sharing plans are well-protected under applicable creditor laws and well-accepted under the tax law in conventional form.

More aggressive plans such as 419A Welfare Benefit plans and 412i plans should be examined carefully by independent advisors before investing.

The author urges clients to use independent accountants who are not compensated directly or indirectly for the sale of financial products. The author has seen entire fortunes lost to tax shelter deals in the 1970s, leveraged real estate deals in the 1980s, land development deals in the 1990s, and now Madoff and related Ponzi and margined-securities deals in the present decade. Crime often pays, and the victim is the doctor who gets involved in these types of arrangements.

There is rarely a good reason for a pension or profit-sharing plan to own a life insurance or annuity product, except to compensate anyone who may be licensed in life insurance and annuities who has involvement in the pension or profit-sharing

9. Unbalanced Investment Portfolio. Statistical studies show that a diversified portfolio of investments will generally out perform a non-diversified portfolio, with significantly less risk. Many successful clients own investment real estate, mutual funds allocated among the various classes of stock investments, and bond funds or CDs. It almost never makes sense for anyone to put all of their eggs in one basket.

Go For Singles and Doubles, Not Home runs. Time and time again we have seen physicians place significant portions of their financial assets into high risk investments or ventures with the intention of hitting “a home run” under risky circumstances.

There is almost always a direct and opposite correlation between expected rate of return and risk being taken. Many high income professionals recognize this and are nevertheless willing to take risks. Quite often, however, physician investors are assured that an arrangement is “virtually risk free” even though it is expected (or touted) to yield a significant return. If it is too good to be true. . .it probably is.

10. Doing Business with the Wrong People. Unfortunately, crime, and also deceitful or misleading behavior can be lucrative for the "bad or careless actor," and these individuals are often found courting doctors to do business and investment transactions or to provide consulting services.

Since the overwhelming majority of doctors are very honest and do not have formal business training, it is not difficult to market "unique propositions" to doctors and to eventually find a handful of doctors who may succumb to participate in a recommended arrangement.

Commonly these "bad actors" will present themselves through relatives, friends and possibly even misled advisors.

Typically the doctor will be asked to invest in a startup or growing company, to help start a new business, or to be involved in the purchasing or financing of real estate.

Bad actors are often well-dressed, exhibit success in the forms of nice house and cars, and sometimes even jet airplanes, stunning vacations, trophy wives, and impressive club memberships.

A team of advisors can usually sniff out this type of individual or organization by checking references, or the lack thereof, licensing, and with other professionals who have worked with the applicable individual. The author has seen this occur in billing companies, unique invention startups, real estate ventures, medical related companies, ice machines (that did not exist), Ponzi schemes, and other situations.

If it sounds too good to be true it usually is! And do not forget the adage about the experienced businessman and the doctor who become partners. The businessman puts in his experience and the doctor puts in his money. At the end of the day the businessman has the money and the doctor merely has an experience!

Doctors with gamble-holic tendencies are often drawn to elusive schemes where the doctor is told that he or she has earned millions of dollars and should have colleagues put money in so that they can earn millions too, while in reality the "con job" is that the money is being stolen or used to pay debts on assets that will never be worth anything. A junior Madoff may be your next door neighbor or brother-in-law!

Every year the IRS publishes the "Dirty Dozen," a list of tax frauds, including schemes involving the internet, domestic tax crimes, offshore frauds and false claims for refunds. This is done for the benefit of citizens and their awareness of financial predators. The IRS website at http://www.irs.gov/newsroom/article/0,id=206370,00.html says it right: "Taxpayers should be wary of scams to avoid paying taxes that seem too good to be true, especially during these challenging economic times," Commissioner Doug Shulman said. "There is no secret trick that can eliminate a person's tax obligations. People should be wary of anyone peddling any of these scams."

11. Failure to Have Anyone in the Practice Pay Attention to Contracts with Third Parties. Quite often medical practices get into disputes or find themselves stuck in agreements as a result of a trusting nature or lack of attention to details associated with contracts they enter into with third parties. Say, for example, somebody delivers a copier to the medical practice that the office manager has requested on a trial basis. Upon delivery, that person gets the receptionist to sign a contract accepting copier and binding the practice to 48 months of payments.

Another example is when a medical practice has a lease that gives the doctors the right to extend after a certain date, but they forget to give notice of extension by the deadline. The practice gets held up by the landlord for a larger rent payment or has to vacate and find new property.

A third example is when a lease for a large piece of equipment also requires the practice to maintain the equipment with one company only. The company may provide poor service or may not permit the practice to pre-pay the lease or re-finance it from a high rate of interest without paying tens of thousands of dollars in penalties.

Another trap some practices fall into is using an office manager or non-CPA accountant to draft legal documents that employ physicians or to set up companies for the practice, not realizing that the contracts have inappropriate provisions or do not cover essential items that a lawyer or appropriately qualified advisor would have pointed out.

F. Lee Bailey said that "anyone who acts as his own lawyer has a fool for a client."

Most successful lawyers hire other lawyers to do work for them personally when it is outside of their area of specialty, or sometimes even when it is within their area of specialty because of this phenomenon.

If lawyers are smart enough not to do legal work for themselves, why aren't doctors and their other advisors?

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Follow Up Checklist

ITEM	DONE	NEEDS TO BE DONE	NOT SURE	DELEGATE TO
1. Malpractice insurance in place with calendaring for renewal.				
2. Corporate malpractice insurance policy in place or considered.				
3. Nurse practitioners and nurses having separate policies?				
4. Insurance for automobile liability?				
5. Employment agreements in place to document that wages paid to the doctor should be exempt from creditor claims of the doctor.				
6. Does the PA lease real estate from a related entity? Is there a long-term lease agreement in place to insulate the owner entity from accidents on the property?				
7. Does the long-term lease give the landlord entity a UCC-1 field lien against the assets of the medical practice?				
8. Does the medical practice owe money to “friendly creditors” like a bank?				
9. Are the medical practice assets properly pledged as collateral for the loan by filing of UCC-1 financing statements?				
10. Will the practice acquire expensive equipment or other assets that can be held by an entity for the family to not be owned by the practice, or that can be leased in the same manner?				

Follow Up Checklist

ITEM	DONE	NEEDS TO BE DONE	NOT SURE	DELEGATE TO
11. Are there any loans on buildings, to family members or otherwise, that can be collateralized by medical practice assets, by proper documentation that will normally include a guaranty by the practice entity and a UCC-1 financing statement/security agreement being executed?				
12. Are there employment agreements in place which clearly delineate wages, and are wages being paid and appropriately thereafter saved in creditor protected ways? Are dividends being spent first and wages being saved?				
13. Are there separate medical practice endeavors that should be separated into separate corporations, such as a specialty practice, a weight loss center, and/or a sleep center?				
14. Assure proper ownership configuration to also comply with Florida anti-referral laws.				
15. Do the doctors have non-competition covenants and/or have they given the medical practice patient file rights that might conceivably be enforceable by a creditor?				
16. If a shareholder/physician may have personal creditor problems, is the transferability of entity ownership properly limited, and perhaps pledged as collateral to a “friendly lender?”				
17. Are there Letters of Protection or other significant receivables that should perhaps be factored or otherwise handled in order to be less exposed to potential creditors?				
18. Review materials with advisors for further possible items of follow up?				

Primary Causes of Liability

Catastrophes in the Making

1. Debt: General creditors, medical creditors, guarantees, provider agreements, etc.

2. Tort Liability (civil breaches of contract, rather than criminal):

   a. Auto owners and drivers (boats and other vehicles)

   b. Errors and omissions - professional malpractice.

   c. Aiding and abetting others who commit wrongdoings.

   d. Premises liability- building owners. Think of that child on the tricycle going up the wheelchair ramp and flipping down the stairs. Also consider the following:

      (i) Hazardous waste.

      (ii) Asbestos and other harmful building materials.

      (iii) People hurt by construction defects.

      (iv) People tripping and hurting themselves in the parking lot.

      (v) Tenants with rowdy customers who shoot people.

      (vi) Inappropriate acts by lease management.

      (vii) Children eating lead paint.

Primary Causes of Liability

3. Relationship Liability:

   a. Joint and several liability.

   b. Partnerships.

   c. Co-signors or co-guarantors on notes.

   d. Joint tort feasors (those who commit civil faults) can be jointly and severally liable for economic damages.

   e. Co-conspirators.

   f. Vicarious liability: An employer is generally liable for the activities of employees in the scope of the business. What if the receptionist runs over a child while running an errand?

   g. Spoiled romances and accusations by a forlorn ex-girlfriend or boyfriend, especially if you employed him or her.

4. Tax Liabilities:

   a. Income taxes.

   b. Trust fund - employee withholding – money stolen that should have gone to the government – paying employees as independent contractors.

   c. Penalties, interest, and criminal implications.

Primary Causes of Liability

5. Others:

a. Divorce: Alimony and property settlement.

b. Child support.

c. Hazardous waste liability and related issues.

d. Student loans.

e. Business participation: Sexual discrimination, etc.

f. Involvement as trustee with relationship to pension plans.

g. Medicare and other payors.

h. Real estate liability:

(i) Hazardous waste.

(ii) Lead paint.

(iii) Asbestos.

(iv) Tort liability.

(v) Vicarious liability for building activities.

(vi) Civil rights or other violations.

Understanding Your Liability Insurance Coverage

The vast majority of carriers will only issue a $250,000 policy on your home, a $250,000 policy on your driving, and a $250,000 policy on your vacation home. A separate "umbrella carrier" or "carriers" will then issue separate policies for above $250,000, as shown in the example below. Sometimes one carrier will write two or more of the below described policies, but often there will be 3 or more carriers involved and coordination can be a challenge:

<table>
<tr><td>$5,000,000

$251,000</td><td colspan="2">Umbrella Policy #1

Covers claims for home at $300,000 and for cars at $250,000.

Must be "drop-down" umbrella if home policy is issued by Citizens or a comparable state agency that does not cover liabilities from pools, pets, or other notable exceptions.</td><td>$5,000,000

$301,000</td><td colspan="2">Umbrella Policy #2

May need a separate umbrella for out-of-state vacation home, large boats or other items.

  </td></tr>
<tr><td>$250,000

$0</td><td>Policy #1 – Homeowners</td><td>Policy #2 – Vacation Home</td><td>$300,000

$0</td><td>Policy #3 – Car Driver and Owner Policy</td><td>Policy #4 - Big Boat at Vacation Home</td></tr>
</table>

UMBRELLA INSURANCE COVERAGE

Re: UMBRELLA LIABILITY INSURANCE COVERAGE

Dear _____:

As part of our planning I wanted to reiterate the importance of having an appropriately coordinated and “gap free” liability and casualty insurance program.

I am enclosing a sample letter that some clients use to help assure that they have coverage for common gaps or mistakes made in structuring liability insurance. If you would like assistance in completing this type of letter, please let me know.

The rest of this letter is about umbrella liability insurance coverage. We believe that it is very important to have appropriate limits of liability on automobile and homeowner insurance policies. Typically, the automobile and homeowner policies will be at $500,000 coverage, and then there will be excess coverage under what is called a "personal umbrella policy.“

The personal umbrella policy is used in combination with homeowners and auto policies to cover most clients' needs. If it is a true "umbrella" it will provide excess limits above and beyond your primary insurance coverage (such as homeowners, automobile or boat policy), and will also provide coverage for situations excluded or not addressed by underlying coverages. Each individual insurance company will have its own requirement for limits that you must have on your primary policies. You will want to be careful to assure that these policies are coordinated with your umbrella coverage.

Umbrella limits start at $1,000,000 and can go over $10,000,000. Pricing for these policies are based primarily on the number of houses and vehicles to be insured, with each additional $1,000,000 of coverage being less expensive than the preceding. In your situation I would probably have $_____ of umbrella liability insurance. Also, I would consider placing much of your brokerage account and other assets under a family limited partnership to further insulate you for creditor protection purposes.

Another coverage that is often underutilized by clients is called "uninsured motorist coverage." If you are in an automobile accident caused by someone who does not have enough coverage to pay for your damages, you can pursue your own insurance company to the extent of your "uninsured motorist" coverage. We encourage clients to see what it costs to have $500,000 or more in uninsured motorist coverage to help compensate for catastrophic accidents that can happen.

Some carriers, including citizens and carriers who have assumed policies from citizens do not provide liability coverage for pool and pet or animal related liabilities. In this event the Umbrella liability coverage may or may not apply. This is something that should be discussed with the insurance agency or carrier that provides liability coverage.

If we can provide you with any further information or with assistance concerning your insurances, please let us know.

Very truly yours,

Alan S. Gassman

Dear Liability Insurance Agency and/or Carrier:

I recently met with my estate planning lawyer and wanted to make sure of the following:

1. Please confirm that we have Personal Liability Umbrella insurance covering our automobiles, boats, recreational vehicles, and all properties owned. I would like quotes on the following coverage limits, $1,000,000, $3,000,000 and $5,000,000, with and without Uninsured Motorist coverage.

2. Please confirm that we are covered for animal liability under our primary homeowners insurance and confirm that the Liability Umbrella would also extend to animal liability. We have been told that the primary homeowners may exclude animal liability and that some Liability Umbrella policies will not provide coverage when the primary homeowners insurance excludes same.

3. Please confirm that we are covered for pool related accidents occurring on our property and also confirm that the Personal Liability Umbrella policy will also extend coverage to pool related accidents.

4. Can you please confirm that we are covered for cars being driven by _____.

5. Can you please confirm that we are covered for the investment property that we own at _____. It is titled under the name of _____

6. Can you please confirm that we are covered for our _____ boat, which is _____ foot long and is normally stored at _____. The horsepower is _____.

Are we also covered for trailering the boat with our trailer?

Also, can you please confirm that we are covered for our waverunner/jet ski which is a _____ with horsepower of _____. It is stored at _____.

7. You do not handle the coverage for our vacation _____ in _____ or our vacation _____ in _____. Is our potential liability relating to the use of these properties covered under our umbrella, or do we have to obtain a separate umbrella for these properties?

Our _____ and _____ are stored and used up in our _____ _____.

8. _____ drives the car owned by _____ both for personal purposes and with respect to the _____ business. We assume our coverage includes business driving both by _____ and by _____ who occasionally drive the car for the business.

9. Can you please confirm that we are covered for our motorcycle being driven by _____.

10. Is there anything not mentioned above that comes to mind that we should be aware of?

Please send our lawyer, Alan S. Gassman, a copy of your response to this letter, which has been generated as a part of our estate planning. Alan's email address is AGassman@gassmanpa.com and his street address is 1245 Court Street, Suite 102, Clearwater, Florida 33746. His fax number is (727) 443-5829. Please send us a copy of your response as well.

If you have any further suggestions with respect to our coverages please let us know. Thank you very much for your assistance herewith.

Best personal regards,
CLIENT

Advantages and Disadvantages of Lowering Malpractice Insurance Limits

I. **ADVANTAGES:**

1. Reduction of premiums.

2. In a horrendous situation, a carrier is going to be more likely to simply give up policy limits than to defend a complicated case.

3. In a small number of instances where the liability may be great, but negligence is hard to prove, some plaintiff firms may not pursue a suit if there are fewer dollars available at the end of the rainbow. The better firms may reject such claims, and the "second or third tier plaintiff firms" will more likely settle for less or lose the suit.

4. As a matter of principle, this will leave less money for plaintiffs' lawyers and people who sue doctors to help stop feeding the industry.

5. From a public records and future evaluation standpoint, the prospect of being able to settle any claim at $250,000 instead of at a higher limit means that catastrophic claims will be characterized as having been $250,000 matters as opposed to $1,000,000 matters.

II. **DISADVANTAGES:**

1. If there is a serious claim, personal and practice assets will be exposed so that damages can exceed policy limits. IF A CLAIM VALUE EXCEEDS LIMITS OF LIABILITY, PERSONAL AND PRACTICE ASSETS MAY BE LOST, although this is generally unlikely if proper planning has been effectuated.

Advantages and Disadvantages of Lowering Malpractice Insurance Limits

2. Having to go through defending a claim with the risk of losing personal or practice assets results in significantly higher emotional distress for the physician, their partners, and loved ones.

3. Maintaining high limits going forward means that the carrier would have to defend claims for future acts at the same high limits. Reducing limits now means that claims made in the past will only be subject to the now lower limits.

4. Potential employed physicians, banks, and managed care plans may be reluctant to work with a practice having lower limits.

5. In case of an actual error & an injured patient, having more coverage might be the right thing.

III. **THE MIDDLE GROUND:**

1. Many physicians have chosen small out-of-state or offshore carriers or "self-insurance" programs in lieu of traditional malpractice insurance.

2. These programs usually cost much less than traditional malpractice insurance, and offer the doctors "more control" over the claims process.

3. These carriers are not registered with Florida, and upon becoming insolvent the doctor has no protection at all.

4. These carriers are much more likely to become insolvent than Florida carriers.

5. In some cases, these carriers do not satisfy the definitional requirements of "malpractice insurance", so the doctor is actually "*bare*", but may not know to follow the going bare rules. A patient with a judgment against such a doctor may have the ability to cause the doctor to lose his or her discharge in bankruptcy and medical license!

Procure and Maintain Proper Other Insurances

- Other than malpractice insurance, there are several other important insurances that are easy (and affordable) to maintain:
  - disability insurance;
  - overhead insurance;
  - liability insurance (for non-malpractice obligations)
  - worker's compensation insurance
  - unowned automobile liability insurance
  - individual automobile liability policies
    - 3M – 5M in umbrella coverage recommended
  - Uninsured Motorist Coverage - if the person who hits you in an automobile accident doesn't have enough insurance, your own carrier can pay for your injuries and damages if you have sufficient uninsured motorist coverage