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THE BASICS OF ASSET PROTECTION AND LIABILITY MANAGEMENT

WHAT IS ASSET PROTECTION AND LIABILITY MANAGEMENT?

Asset protection and liability management involves the use of several tiers of legal and strategic protections for individuals, families and/or business to maximize the legal safeguards provided to minimize the expose of assets to liabilities and lawsuits. The preservation of what has taken years for an individual or business to build requires sophisticated and diligent advance planning. Unfortunately, many are unaware of numerous simple legal measures that can be taken to provide significant protection of their assets and a limitation of potential liability. Regardless of the amount of assets you hold, client-specific risk management and asset protection measures are a crucial component to protect assets, manage risk, and maximize the protections that are allowable by law. Businesses, families and individuals often discover too late the measures they could have previously taken to protect their now-exposed assets and businesses, which would have minimized liability and asset exposure. Our firm utilizes a client-specific approach to asset protection and risk management to ensure that our clients have instituted and properly utilized the protections that the law provides to protect assets and minimize exposure to liability.

IS ASSET PROTECTION LEGAL?

All of the asset protection strategies we utilize are legal. The key to successful asset protection is to implement asset protection measures in advance of a creditor seeking to collect from you.

WHAT ARE THE FIRST STEPS I SHOULD TAKE TO IMPLEMENT AN ASSET PROTECTION PLAN?

The first step in developing an asset protection plan is to evaluate your assets and potential liability.

If you are operating any kind of business, one of the first things that needs to be considered is the business entity you have chosen to use to conduct business. A DBA (doing business as) provides no protection of your personal assets from business debts and liabilities. Anyone operating a business of any size or kind should utilize a business entity that provides legal protection for your personal assets (such as corporations, limited liability companies, limited liability partnerships, etc.). If operated properly, in most instances, these type of entities will shield your personal assets from liability associated with your business. Depending on your circumstances, there are certain advantages and disadvantages associated with each of the different types of business entities ranging from taxation to the management of the business that should be carefully considered when deciding on the specific form of business entity. Asset protection may be further enhanced through the use of multiple entities depending on the specific circumstances of your business operations and assets.

Another component of asset protection that is often overlooked is insurance coverage. An essential component of asset protection and liability management involves maximizing liability insurance. Most business owners or individuals with even modest assets (such as a home) should strongly consider purchasing an umbrella policy. These policies are typically inexpensive and provide considerable liability protection and coverages that extend to most types of insurable liability. Another consideration is to evaluate your coverages on car insurance, general liability insurance, or homeowners insurance. If you have only the state minimums on car insurance, you or your company could be exposed to very high liabilities given that in many instances medical costs alone from one injured person in an accident can

dramatically exceed the state car insurance minimums, without factoring in any other liability associated with an accident.

ONCE I HAVE IMPLEMENTED THE BASICS, WHAT ELSE CAN I DO TO FURTHER PROTECT ASSETS OR MANAGE LIABILITY?

Once you have implemented some of the basic asset protection measures available under the law, the next step is to evaluate your circumstances to determine if more advanced measures are also appropriate. You should consider additional asset protection for (1) persons or businesses with assets that are moderate or greater; or (2) persons or businesses involved in activities or industries with the potential for high liability. Unfortunately, the ownership of a successful business (even a small business) or significant assets often makes you a target in today's society. In many instances, when an attorney evaluates a potential lawsuit with a client, one of the first issues raised is the ability to collect any judgment obtained. Effective asset protection planning can help make you or your business less of a target and make lawsuits less inviting.

Depending on your specific circumstances, there are a vast array of advanced asset protection measures that legally can provide further protection, such as: (1) the establishment of a trust to help manage liability and protect assets; (2) planning for changes in your own or a key executive's life changes such as, as estate planning, marriage planning, long-term care planning, and disability planning; (3) ensuring that you are properly observing corporate formalities and accounting requirements to maintain a business entity's liability protections; (4) consideration of incorporating in out-of-state locations such as Delaware or Nevada due to their laws that are more favorable to corporations than other states; (4) off-shore corporations or trusts.

WHY DO I NEED TO PLAN AND TAKE ACTIONS IN ADVANCE?

Asset protection and liability management can only be effective if it is planned and implemented well in advance of a lawsuit or a creditor seeking collection. Once an obligation has been incurred, once an act has been committed, or once a lawsuit has been filed, it is nearly impossible—and in most instances illegal—to alter the business structure, obtain insurance to cover the liability, or otherwise protect assets. Therefore, the most essential and important component of any asset protection plan is to implement the plan as soon as possible and well in advance of any situation that might raise the need to protect assets and limit liability. Advance planning is clearly the most effective and important tool when it comes to asset protection. In addition, once an asset protection plan is made and implemented, it is also crucial to regularly re-evaluate your circumstances and your asset protection plan to ensure that you maximize the legally allowed asset protection measures and alter your plan as your circumstances, your business or the law changes over time.

HOW CAN I FIND OUT MORE OR IMPLEMENT AN ASSET PROTECTION PLAN?

If you have further questions about asset protection and liability management, or if you would like to evaluate your circumstances and implement an asset protection plan, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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