Protecting your assets

It's more than just keeping your business, home and car safe from creditors

BY BRENDAN KING

When I ask people what they think asset protection planning is all about, they typically answer, "It's about keeping my business, cash, home, car, boat and investments safe from creditors. Right?" Almost — but not quite. The truth is, asset protection is bigger. It's about preserving wealth — all of your wealth. Other things need to be taken into consideration. Things like tax implications, planning for expected substantial expenses for college funding and caring for an aging parent, avoiding unnecessary legal costs, and how an estate will pass from one generation to the next are critical. Preserving wealth is a strategic process and it requires planning to get it right.

Professionals, experienced in wealth preservation, have many tools to protect their clients' holdings. They include contracts, trusts, and state created entities. Businesses should be protected by the use of a state created entity, such as a corporation or a limited liability company (LLC). These entities can protect personal assets from liabilities that occur in a business and can also protect business assets from personal liability. Trusts are great planning tools that can be used to protect assets and, importantly, to protect a beneficiary's right to government benefits such as Supplemental Security Income and Medicaid. Contracts are also used to protect assets and can be drawn on inside of or outside of a business setting (i.e. a prenuptial agreement). In practice, professionals often use a combination of state created business entities, contracts and trusts to design an asset protection plan.

Asset protection, as part of a greater wealth preservation plan, also takes taxes into consideration. More specifically, the proper plan will prevent an estate from having to pay more income, estate, gift and/or generation-skipping transfer taxes than an estate is legally obligated to pay. It's a given: When taxes are due, they must be paid. However, there are certain deductions, credits, exemptions and exclusions that you must be aware of when considering ways to protect assets from erosion. With the maximum estate tax rate close to 50 percent at the federal level, good tax planning is simply essential.

Nursing home stays now cost about $100,000 a year; sending a child to a four year private college costs over $40,000 a year. While we would all like to ignore those facts, they are real possibilities and need to be looked at — seriously. Wealth preservation planning takes the possibility of such large expenses into account. With respect to a nursing home stay, there are many important considerations. A good plan must advise when and how to purchase long term care insurance and how to protect the family homestead so it won't be lost to the costs of long term care. Moreover, families need to know how a gift to a family member might affect eligibility for public entitlements.

Equally important is college planning. A wealth preservation strategy must weigh the tax benefits of a Section 529 Savings Plan. It is also important to know how a family's "expected family contribution" is calculated with respect to financial aid and which schools historically meet one hundred percent of a family's financial needs.

In reality, asset protection, as part of a greater wealth preservation strategy, will prevent an individual or business from having to pay unnecessary legal or other professional costs. Yes, a suitable Estate Plan professionally tailored to each client's needs will have associated costs. Compared to the huge expenses that can arise when proper planning has not been done, these costs are minimal. In some cases, an individual's estate should pass by will, and, thus, the estate will be handled in the probate court. In most cases, however, the added financial costs and time spent in probate is unnecessary. Avoiding probate can save tens of thousands of dollars (depending on the size of the estate and its contents), and possibly avoid years of administration. With a probate, not only are there added legal fees but, extra costs in tax preparation, accounting, appraisals and fiduciary fees. And, when there is a need to probate an estate in more than one jurisdiction, which happens quite frequently with many people having second homes in other states, costs increase even more.

Protecting your assets really is so much more than just keeping your business, home, and your car safe from creditors. It's important to get it right. Planning is key to keeping hard-earned funds, holdings, and investments. With proper consideration and with the hiring of competent professionals, an individually tailored wealth preservation plan that addresses your specific needs can be created.

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Attorney Brendan King says corporations and limited liability companies can ensure an estate's passage from one generation to the next despite life-changing expenses.