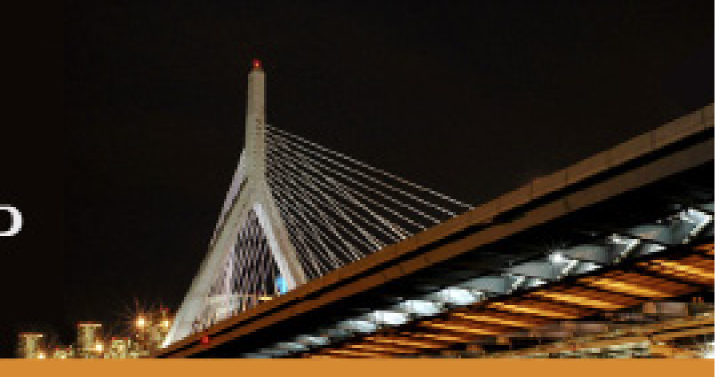
Estate Preservation Law Offices

BRIDGING THE GAP

between traditional estate planning and asset protection



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Practice Areas

Estate Planning
Asset Protection Planning
Business and Corporate Planning
Tax Planning -
 Corporate and Individual
Elder Law and Medicaid Planning
Estate and Trust Administration
Guardianships and Conservatorships
Special Needs and Disability Planning
Financial Aid Planning
Veterans Benefits Planning
Charitable and Exempt Organizations
Equine and Pet Trust Planning

Locations

Our main office is located at
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Worcester, MA 01609
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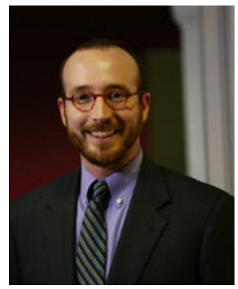
www.estatepreservationlaw.com

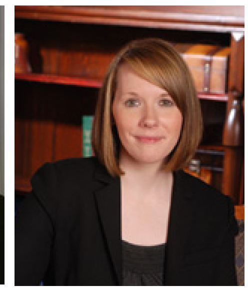
For our clients' convenience,
we also have offices in
Braintree and Hyannis, MA

In This Issue

Asset Protection: An Everyday Part of Estate Planning



Brendan J. King



Linda T. Cammuso

To many people, the term "asset protection" conjures up images of Swiss bank accounts or hiding assets in someone else's name. In reality, asset protection bears little resemblance to the stereotypical Hollywood notions that capture the imagination. At its most basic level, asset protection simply involves protecting and preserving one's assets from third parties.

Third party threats to your assets can come in the form of a lawsuit, divorce, bankruptcy or other general creditor attacks. Savvy clients have come to recognize the importance of protecting assets during their lives to ensure they preserve a legacy for their loved ones. To that end, protection of one's assets has joined the ranks of probate avoidance, estate tax reduction and long-term care planning as just another client goal in the estate planning process.

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If You're a Business Owner

Business Ownership Presents Special Creditor Concerns

If you own a business, your estate plan should have an asset protection component. Sadly, many owners of thriving businesses fail to adequately protect their most important asset - the business itself!

Traditional business planning involves forming an entity (such as a corporation or LLC) to protect the owner's personal assets from claims and liabilities associated with the business - what is commonly referred to as "inside liability". However, business owners might be personally sued for their own misconduct or negligence, either associated with the business activity or unrelated (such as a car accident), leaving the business itself exposed to the owner's "outside liabilities".

For many business owners the business itself is their most valuable asset - both in terms of the monetary value of the business and in the fact that the business is the owner's source of income and livelihood. Businesses are complex assets in the asset protection realm

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Asset Protection *Continued from page one*

Once you identify asset protection as an important planning objective for you and your family, what's the next step?

You may already have some asset protection

In the creditor realm, asset protection involves holding assets in a way that minimizes exposure to claims of current or future creditors. Even if you have never purposely engaged in asset protection, you may already have some protections in place:

- **Do you have a 401(k) or IRA?** These types of accounts have automatic statutory protection from certain types of creditors.
- **Do you have a Homestead on your primary residence?** This will protect up to $500,000 of equity in your home from general creditors.
- **Do you and your spouse own your home together?** If so, you probably hold it as "tenants by the entirety", which provides special protection of the home from each other's creditors.
- **If you are a business owner, is the business organized with the state as a partnership, corporation or LLC?** A properly formed and administered business entity can segregate your personal and business liabilities.

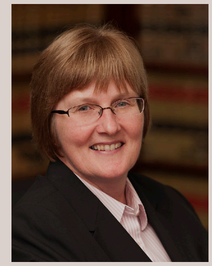
On a broader level, asset protection also involves avoiding costs and expenses. For example, if you have taken steps to minimize estate and gift taxes, avoid probate or shelter assets from future long-term care/nursing home costs, you have engaged in asset protection by preserving a greater net benefit for the future beneficiaries of your estate.

Some people must consider more specific forms of creditor-oriented asset protection because their profession (e.g. medical professional, contractor, attorney, etc.) or other activities make it more likely that they could be sued. Others may own assets (e.g. a rental property or business) that inherently expose them to claims by third parties such as tenants, clients or employees. These individuals need to engage in a more conscious level of asset protection planning through the estate planning process. Legal vehicles such as trusts and business entities (e.g. LLCs) can be effective to shelter exposed assets.

At EPLO, we understand that an important aspect of our role as your estate planning counsel is to help you identify risks and find solutions to minimize exposures to your estate. Our model of estate planning is built upon the foundation of lifetime asset protection and preservation as a complement to traditional estate planning services.

If you have any questions about asset protection, please contact an EPLO attorney for more information.

Attorney Carol Barton Joins EPLO



Estate Preservation Law Offices welcomes Carol F. Barton, Esquire to the firm.

Her practice concentrates on estate planning, estate and trust administration, elder law and Medicaid planning, special needs and disability planning. Carol also represents clients in various probate matters including guardianships and conservatorships. She is skilled in working with professionals in nursing homes, as well as with social workers and geriatric case managers with the legal administration of client matters.

She holds a Juris Doctor degree from New England School of Law and a Master of Laws from Western New England College School of Law. She is licensed to practice in Massachusetts and before the United States District Court in Massachusetts.

Carol lives in Shrewsbury, MA with her husband and daughter.

Updates

Super Lawyers

For the third year in a row, Brendan King has been named a Massachusetts Rising Star. Fewer than 5 percent of lawyers in Massachusetts qualify for this recognition. The annual selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area.

MUTC Signed into Law

Governor Deval Patrick signed the Massachusetts Uniform Trust Code on July 8. This law brings comprehensive changes to the administration of trusts in Massachusetts and applies to all trust instruments, whenever created. Please read our Blog, Massachusetts Uniform Trust Code, at www.estatepreservationlaw.com

The Role of Trusts in Asset Protection Planning

Joe, a small business owner, and Jennifer, a pediatrician, are a married couple approaching their fifties and enjoying a fruitful and successful life. They want to ensure that they and their children and (eventually) grandchildren reap the benefits of their years of hard work. Joe and Jennifer have already established an estate plan for estate taxes, probate avoidance and to manage the children's inheritances, and feel confident that their family will be provided for when they're gone. However, they wonder if there is something else they could do to preserve their assets while they are alive. The answer may be to augment their current estate plan with a special type of trust designed for lifetime asset protection.

A trust is a legal agreement where one party (the "trustee") holds assets for the benefit of another (the "beneficiary"). The terms of the agreement are set forth in a legal document. In a typical trust arrangement, the person who creates and funds the trust with his/her assets (the "grantor") is both the trustee and beneficiary; upon the grantor's death, the assets are passed on to whomever the grantor designates in the trust document - spouse, children, extended family, charities, etc.

Trusts are used every day in estate planning for a variety of reasons, including probate avoidance, gift tax and estate tax planning, protection of beneficiaries including minors, spendthrifts and individuals with special needs, and sheltering assets from long-term care/nursing home expenses.

Revocable and Irrevocable Trusts

Many people mistakenly believe that assets in a trust are automatically protected from their creditors. Trusts used for everyday estate planning are usually "revocable", meaning that the grantor can change or undo (revoke) the trust at any time during his/her life. While a great tool for estate planning, revocable trusts do not offer any asset protection for the grantor. Even if a trust is "irrevocable" (not capable of being revoked or amended), under Massachusetts law it will still have exposure to the grantor's creditors to the extent the grantor is able to benefit from it.

The key to protecting assets in an irrevocable trust from the grantor's creditors is to limit the beneficial rights that the grantor has in the trust. Such a trust can still provide for the grantor's family, as well as accomplish tax planning, probate avoidance and inheritance management for the grantor's heirs. These trusts can be ideal ways to protect and pass on assets that the grantor may not need or want to directly spend/use, but over which he/she would still like to exercise a certain degree of control during his/her life. The design and funding of such a trust should be done carefully and in consultation with a knowledgeable estate planning attorney.

Business Owners

Continued from page one

in that they are both a source of liability and an asset that needs to be protected in its own right.

One of the keys to protecting the business as an asset is utilizing the most protective form of business entity. For example, a properly-structured LLC (limited liability company) can offer more "outside liability" than a corporation. Additionally, how the business owner holds his/her interest in the business can affect the business's exposures to the owner's personal liabilities. For example, owning shares in certain types of trusts can offer more protection than holding the shares in an owner's sole name.

Another key to protecting a business in a multi-owner scenario is a buy-sell agreement between the owners. These agreements are typically used to address owners' respective rights and obligations in the event of an owner's death, disability or voluntary exit from the business. In the asset protection context, they can protect the business from an owner's divorce or other outside creditors.

Consider the many threats that business owners face today - disgruntled or injured employee scenarios, consumers claiming injury from a product, or patients or clients alleging malpractice - which could all lead to claims against a business or its owners. It has never been more crucial for business owners to protect themselves and their business through comprehensive estate and asset protection planning.

Protecting Your Children's Inheritance

When parents name a child in a will or trust, or list the child as a joint owner on an asset (e.g. a bank account) or as a beneficiary of life insurance or an IRA/401**(k)**, the asset becomes the child's property upon the parent's death.

Today more than ever, parents are concerned about how children (and grandchildren) will handle their inheritances. Statistically, inherited money is spent at a significantly faster rate than a person's earned or saved money. Whether because the children are young, in debt, struggling with an addiction, or simply not good with money, many parents fear that their life savings will quickly vanish in the children's hands.

In addition to voluntary spending, children also stand to lose inherited assets involuntarily:

- With a skyrocketing divorce rate, many inheritances will be lost to children's spouses in future divorce proceeding.
- Inheritances can be quickly lost to bankruptcies, foreclosures and other creditor problems.
- Children in high-risk professions may become the target of a lawsuit and lose their inheritance to a judgment creditor.
- Children who are disabled may lose certain benefits (such as SSI or Medicaid) if the inheritance raises their assets beyond program limits.
- A child with college-age children can suffer adverse college financial aid consequences from the receipt of an inheritance.

The good news is that some simple modifications to your estate plan can protect your children's (or other beneficiaries') inheritance from virtually all financial threats. With a straightforward trust arrangement, your children can benefit from their inheritance yet not have it considered their asset for creditors, divorces, public benefits or even their own unwise spending.

Your estate plan presents a unique opportunity to provide a level of asset protection for your children (or other beneficiaries) that they would not be able to achieve for themselves once the inheritance comes into their name. This is because the laws of most states (including Massachusetts) do not allow a person to establish a trust with their own assets and benefit from it while at the same time shielding it from their creditors; yet, a person can establish a trust with their assets, for the benefit of someone else, and with the right language protect the trust assets from the third party-beneficiary's creditors. Bottom line: if you leave all or a portion of your children's inheritance in trust for their benefit, you can protect it both from them and their outside financial exposures.

Asset Protection: What is Your Next Step?

• **If you are a current EPLO client:**
You can schedule a complimentary meeting with an EPLO attorney at any time to evaluate your existing plan in light of your exposures and discuss options to enhance your estate plan with asset protection features.

• **If you are a new/prospective client:**
Asset protection does not happen in a vacuum; to be truly effective, it should be integrated into your current estate plan or as part of a new estate plan. This process begins with a comprehensive (and complimentary) consultation with an EPLO attorney to review your financial/estate picture and identify exposures and possible solutions. Once we have an understanding of your financial, legal and familial situation, we will make comprehensive recommendations for your estate and asset protection planning needs.