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Insights: Perspectives

Asset Protection Planning: A Practical Foundation for Your Family, Business, and Future

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Asset protection planning helps individuals, families, business owners, and professionals manage financial risk while advancing broader family, estate-planning, and business goals. The goal is not a structure that promises complete immunity from claims, but a lawful, practical, and well-documented plan that preserves flexibility and protects wealth against unforeseen risks.

Start With Legitimate Goals

A sound plan begins with legitimate objectives:

- Providing for a spouse or children
- Preserving a family business
- Managing investments
- Facilitating charitable giving
- Organizing assets for efficient administration and succession

Asset protection can be an important benefit of these decisions, but it should not be the sole purpose of a transfer or structure. Planning must comply with fraudulent-transfer and creditor-protection laws — transfers intended to hinder, delay, or defraud existing or reasonably foreseeable creditors may be challenged or reversed, with consequences for both the client and the recipient. Keep clear records of financial condition, planning objectives, and the value exchanged in significant transactions.

Understand Risk Before Selecting a Strategy

- There is no universal solution. A productive process starts with a clear assessment of:
- Assets, liabilities, and business operations
- Investment commitments and personal guarantees
- Fiduciary roles and other potential sources of liability

Insurance is often the first and most important layer of protection. Depending on circumstances, relevant coverage may include professional liability, directors and officers, errors and omissions, umbrella, property and casualty, employment practices, and cybersecurity. Evaluating limits, exclusions, and gaps identifies which risks can be insured and which call for ownership, entity, or trust planning.

Use Ownership and Statutory Protections Carefully

Titling affects both how assets are managed and how exposed they are to creditors. For married clients, options include separate ownership, interspousal transfers, marital agreements, and tenancy by the entirety — which may

protect qualifying property from one spouse's individual creditors, though divorce, death, sale, joint obligations, and federal tax claims can all affect it. Statutory protections may also reach retirement plans, certain IRAs, life insurance, annuities, homestead interests, and education-savings accounts. Because protection varies by jurisdiction and may differ in bankruptcy, do not assume an asset is fully protected.

Separate Business Activities from Personal Wealth

LLCs, limited partnerships, and corporations can separate business liabilities from personal assets. An LLC is often attractive because members can generally participate in management without becoming personally liable for entity obligations solely because of that role. Forming an entity is only the first step. Proper administration requires:

- Separate accounts and adequate capitalization
- Reliable books and records
- Appropriate contracts
- Genuine separation of personal and entity assets

Incorporate Trust Planning Thoughtfully

Trusts are central to many asset protection plans. A trust for a spouse, child, or other descendant may include a spendthrift provision, which generally restricts a beneficiary's ability to transfer a beneficial interest and may limit creditors' ability to reach it before distribution. Trusts funded by a person for that person's own benefit require additional care. In many states, an individual cannot transfer assets to a self-settled trust, retain beneficial access or control, and still expect protection from his or her own creditors. The analysis depends on:

- Governing law and the client's connection to the jurisdiction
- Rights retained by the grantor
- Powers of trustees and trust protectors
- Timing and purpose of funding

Retaining too much authority over distributions can weaken a plan. Carefully defining the roles of trustees, investment and distribution advisers, and trust protectors promotes both prudent management and appropriate independence.

Keep the Plan Practical and Maintain It

More complex planning is not necessarily better planning. For many clients, a coordinated combination of insurance, retirement planning, sensible titling, appropriate ownership between spouses, and conventional estate-planning trusts provides a strong and manageable result. More sophisticated structures may suit clients with substantial wealth, concentrated business holdings, professional liability exposure, or unusual investment risks, but even then, placing too many personal-use assets into a structure can render it impractical or inconsistent with its stated purposes. A plan is only as effective as its administration:

- Follow trust and entity documents
- Title accounts correctly
- Document fiduciary actions and distributions
- Complete tax and regulatory filings on time

Assume your arrangements may eventually be reviewed by creditors, regulators, tax authorities, or courts. The

proper response is not concealment, but a transparent, legitimate, and well-documented plan.

If you have questions or would like more information, please contact Kilpatrick's Private Client Practice.

Related People



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