BUILDING & GROWING WEALTH

RIVERVIEW CAPITAL ADVISERS

RIVERVIEW **INSIGHTS**

February 2015 | *Asset Protection Planning:* **Be Safe, Not Sorry**

Introduction

They say it's better to be safe than sorry. When it comes to asset protection planning, this statement couldn't be truer. Without proper planning, the assets you have worked tirelessly to build can be easy targets in a lawsuit.

At Riverview Capital, our wealth and business advisers recommend that our clients work with top notch attorneys to put an asset protection strategy in place.

Here are notable details to consider when creating an asset protection plan:

You and your advisors must know the rules in your state of residence.

- Every state has its own laws, and planning that may be useful and appropriate in one state might be totally forbidden in another.

Asset protection planning cannot begin after you have a problem with creditors.

- If you move assets in an attempt to avoid existing creditors, you may be accused of "fraudulent transfers." This cannot only undo all the protection you sought for your assets, it can leave you vulnerable to criminal charges.

Current Asset Protection You Most Likely Already Have

You may be surprised to hear that you've already taken some of the first steps in creating a strong asset protection plan. Qualified retirement plan money cannot be seized in a lawsuit; however inherited IRA's are not included. In 2014, the Supreme Court ruled that funds from an inherited IRA are not considered retirement funds exempt from the debtor's bankruptcy estate[1]. This decision mainly affects non-spousal beneficiaries, since spouses are able to roll the funds into an IRA in their own name.

And you most likely have several insurance policies, another critical component of asset protection planning. Most of us know that we need life, disability and health insurance, since a catastrophic health event or premature death can wipe out even a wealthy family's resources.

[1] Supreme Court case (*B.C. Clark v. W.J. Rameker, SCt, 2014-1 USTC 50,317)*

Wealth Advisory

Key Points

- Details to Consider in Asset Protection Planning
- Current Asset Protection You May Already Have
- Legal Strategies for Asset Protection
- Trusts as Asset Protection

But successful people also need the best homeowners', umbrella, and auto insurance policies. If it's available in your line of work, top quality professional malpractice insurance is also essential. If the worst should happen, some or all of your obligation would be paid by your insurance company rather than draining your assets.

So let's assume that your insurance protection is solid, and you keep retirement money in qualified retirement vehicles. What's next?

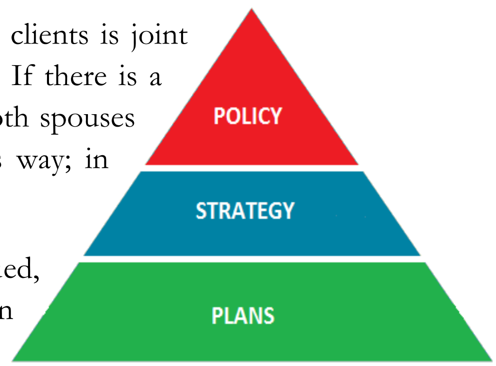
If designed correctly, an asset protection trust can be a valuable tool. This is simply a vehicle for holding assets and shielding them from creditors.

The key phrase here is "if designed correctly." Mishandle an asset protection trust and you can inadvertently commit fraud. The movement of assets into such a trust, if not done legally, can be deemed "fraudulent transfer." Does that get your attention? It should!

With any trust, you give up some control in order to gain other advantages. In estate planning, our clients place assets in trust so that they may be passed to children and grandchildren with less tax exposure. Asset protection planning is different, because the goal is to protect assets for use and enjoyment during your lifetime. Your team at Riverview Capital Advisors will make sure you get expert advice, comply with state law, and integrate the most effective asset protection strategies available to you.

What strategies are legal and useful?

Remember that it varies from state to state, but one possibility for many clients is joint ownership of married couples known as "tenants by the entirety (TBE)." If there is a judgment against one spouse in favor of a creditor, property owned by both spouses cannot be seized. In some states, only real estate can be owned in this way; in others, personal property can also be included.



The downside is that it's not unheard of for both spouses to be sued, particularly if a family business is involved. So TBE alone does not make an asset protection plan.

Trusts as Asset Protection

Clients in need of sophisticated asset protection will most likely use trusts. Some of the possibilities include:

- **Beneficiary trusts with a "spendthrift clause:"** Assets are placed in a trust, and only the appointed trustee can direct the funds inside the trust. The beneficiary, usually the person who earned the assets to begin with, gives up some control over the assets.
- **Limited liability partnerships or companies**: Business owners often form limited liability companies so that creditors cannot pursue the personal assets of the owners to pay business debts. This strategy provides more protection than a sole proprietorship or general partnership, in which owners and the business are legally considered the same.

- **Irrevocable trusts, including Domestic Asset Protection Trusts (DAPTs)**: The problem with irrevocable trusts, as some planners like to say, is that they are irrevocable. If you place assets in an irrevocable trust, you no longer control those assets, and there is no going back on that decision. But because you no longer control how the assets held in trust are distributed, future creditors cannot force you to surrender them to satisfy a judgment.

  It cannot be repeated too many times that the laws affecting Domestic Asset Protection Trusts vary from state to state, and that there is a "look-back" period (meaning only assets transferred before a certain date are unavailable to creditors.) Some advisors believe that the treatment of such trusts has not yet been sufficiently litigated, and therefore recommend against creating one.

- **Foreign Asset Protection Trusts (FAPTs)** are very sophisticated planning tools. It is legal and may be beneficial for American citizens to hold money and property outside of the United States, as long as they pay the appropriate U.S. taxes on the assets.

  In some cases it may be wise to place assets in trusts held in foreign jurisdictions to protect them from potential future creditors. There are many complexities, however, and at Riverview we assist our clients in finding top quality legal advice if considering a foreign trust, as with any sophisticated planning.

Our advisers understand how hard you've worked to build your assets. We will work in partnership with our resources to make sure you have the best possible asset protection strategy in place, and more importantly, to make sure you remain on the safe side.

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