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Calamos Wealth Management Wealth Strategies



# Asset Protection Strategies to Preserve Family Wealth

Wealth preservation strategies are receiving increased attention as market volatility, tax landscape uncertainty and an increasingly litigious society have all combined to place a premium on integrated wealth management planning. Personal risk management—commonly referred to as asset protection—has become a necessary and vital component of an integrated wealth management plan.

# **Integrating Asset Protection Strategies**

Asset protection plans aim to protect assets from unforeseen circumstances arising from business, investment and personal affairs. When integrated with effective business, estate and tax planning strategies, the overall family benefits can be enhanced significantly from an asset protection standpoint.

The first step in integrating asset protection strategies with a family's wealth management plan is to determine sources of liability. The following questions often arise:

- > Are the sources of liability derived at the business level or at the personal level?
- > If it's at the personal level, are there multiple automobile drivers, multiple homes, pools, water crafts, snowmobiles, ATVs?
- > Does a family member sit on public or private boards?
- > Do you travel abroad?
- > Are you the Trustee of a Trust?

The preceding are potential avenues of exposure and can be adequately protected with liability coverages. Most families start life with mass market insurance companies; while these companies serve initial coverage needs well and are economical, as a family accumulates significant wealth a shift to private client liability coverage could be advantageous.

## Initial Wall of Protection: Liability Insurance

Insurance coverages become more complex as a family accumulates a diverse asset pool. It becomes a necessity to have coverage with companies that have a depth of knowledge in representing wealthy families. Several highly regarded insurance companies have created private client groups to offer "best of class" service to families. At a minimum, a review of the benefits of coverage through these companies is part of the due diligence a family should perform to adequately protect themselves.

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Whether the coverage is property and casualty excess liability, malpractice or officer and director insurance, industry sources estimate that the majority of claimants settle disputes within liability insurance coverage limits. Therefore, determining coverage amounts becomes a very important part of the analysis. The bad news is that most families who have accumulated significant assets are under-insured on the property and casualty side. The good news, however, is that increasing excess liability coverage from the typical \$1,000,000 level to more appropriate

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\$5,000,000-\$10,000,000 levels can cost as little as \$150 per million per year. This is a small price to pay for the initial defense mechanism in a successfully integrated asset protection plan.

A review and implementation of additional strategies is necessary to provide strategic protection once the right insurance company and the appropriate liability coverages have been put in place. A successfully integrated asset protection plan is a combination of multiple strategies with varying purposes. This would most likely include estate, tax, retirement, insurance and business planning. The primary purpose of implementing these various strategies is not asset protection. However, when the strategies are integrated in a well thought-out wealth management plan, the benefits from an asset protection perspective can be significant. An effective asset protection plan has multiple strategies creating multiple potential safeguards in the event

unforeseen circumstances occur. No one strategy should be singularly responsible for protecting a family's wealth.

If a family is ever in a situation when assets come under attack, a multiple-strategy plan should have a much higher likelihood of preserving assets than a single-strategy plan. The goal of any asset protection plan isn't avoiding creditors or claimants, it is to preserve family wealth by creating significant safeguards that encourage creditors and claimants to settle for pennies on the dollar.

The initial strategies to consider involve relatively minor efforts and "tried and true" techniques often exempted from creditors' claims by federal and state laws. These include:

## **Retirement Planning**

Not only are retirement plans wonderful asset accumulation tools and effective tax deferral vehicles, they offer significant asset protection benefits. ERISA sponsored plans are protected from creditor claims and a growing number of states have extended that protection to IRAs (and some to 529 College Savings Plans). Very few strategies can match retirement plan efficiencies in tax and asset protection planning. While assets accumulate inside these plans they may be protected from creditor claims. A thorough review of existing retirement plans and corresponding contribution limits is a necessity given the generous tax, wealth accumulation and asset preservation benefits available.

# Tenancy by the Entireties (TBE)

An asset held in "tenancy by the entireties" between a husband and a wife is not subject to either spouse's individual claims, only joint claims. While limited by each specific state, this technique can be a very effective planning tool for married couples, particularly in protecting wealth held in personal residences. A thorough review of your resident state's legislation is necessary prior to TBE planning.

#### Life Insurance and Annuities

While protection varies from state to state, the cash value of many insurance and annuity policies are protected from creditors if the designated beneficiaries of the policies are spouses and/or dependents, or if the assets are held in irrevocable trusts. Combining the wealth replacement and tax deferral benefits of insurance and annuity products with the added benefit of asset protection can enhance the attractiveness of these products. However, a careful economic analysis of any proposed life insurance product is still required prior to its purchase.

As a family continues to develop an effective asset protection plan, they will review and possibly implement more advanced planning tools. Those techniques may include:

# **Limited Liability Business Organizations**

Organizing business activities in distinct entities with limited liability can protect assets in the event of problems within a particular business. Often entrepreneurs will build businesses within a single entity, or with no entity planning at all, resulting in a situation where one entity's assets may be subject to the claims of another entity's creditors. Structuring businesses as separate operating entities can protect related but not interdependent businesses, as well as personal assets of the owners from this unintended cross collateralization. A thorough review of a family's business and real estate holdings, whether operating or passive, is a necessary component of any effective risk management strategy.

#### **Traditional Trust Strategies**

Moving wealth to trusts for the benefit of spouses and/or children—even during one's lifetime—can have significant estate tax planning benefits and can protect the specific assets (and appreciation) not only from estate taxes but also

from creditors. Trusts, when properly drafted, can provide effective and ongoing protection for the assets—with very flexible investment and distribution options. Every family that has accumulated significant wealth should consider integrating current and future planning strategies utilizing trusts. Trusts have been time tested like no other risk management tool. However, not every trust provides optimum risk management protection. Specific provisions and terms are required to insulate the assets contained therein from claims of creditors.

## **Contemporary Trust Strategies**

Several states and many foreign countries have enacted legislation over the last decade that provide the benefits of the traditional trust strategies discussed above, while allowing the individual creating the trust to retain an interest in the trust. While significantly untested, these jurisdictions provide an additional layer of planning that may be appropriate for some families. When combined with the abovementioned strategies, these tools can provide an even higher level of protection for your wealth.

#### Conclusion

There are many strategies and techniques designed to insulate a family's wealth from unforeseen circumstances. The key to an integrated wealth management strategy is to plan now for protection later. Utilizing multiple strategies and blending techniques with effective business, tax, and asset management tools can result in an effective wealth management plan that acts to preserve the wealth you have worked so hard to create.

For more information, please contact Calamos Wealth Management at 888.857.7604.

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