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## September 11, 2023 – Wealth Planning Commentary

### Layering Strategies to Protect Your Wealth

In today's litigious world, it's important to incorporate asset protection planning as part of the wealth planning process. After all, what good is building wealth if it is rapidly taken away by creditors due to an unforeseen event? Asset protection planning is the practice of safeguarding assets from creditors and taxation within the limits of the law. The most effective asset protection strategies are executed before a claim or liability occurs since it is often too late to initiate protection after the fact. At the end of the day, it's likely that no-one is 100% safe from creditors. The concept of a liability shield and layering is important. It's likely that a client's best defense implements several levels of protection to make it painful and prohibitively expensive for creditors to seize assets.

Asset protection strategies employed by ultra-high-net-worth families, such as Domestic Asset Protection Trusts (DAPTs) and Offshore Asset Protection Trusts (OAPTs) may be cost-prohibitive and impractical for many. However, some assets and accounts have built-in creditor protection. The laws vary by state and may differ from federal laws. For these reasons, each family's asset protection strategy is unique.

Many retirement Accounts, but not all, are protected from creditors and bankruptcy at the federal level. ERISA covers many employer-sponsored plans such as 401(k)s, pension plans, some 403(b), qualified deferred comp, and profit-sharing plans. Any amount of assets in these accounts are protected, whether it's $100 or $10mm. However, certain creditors may pierce the ERISA protection. These accounts are exposed to creditors who are former spouses or a tax authority such as the IRS.

Not all retirement plans qualify for ERISA protections. Plans that do not qualify are typically where employers do not contribute: individual 401(k)s and 403(b)s, non-qualified deferred compensation plans, traditional and Roth IRAs, SIMPLE IRAs, and SEP IRAs. There is a federal-level bankruptcy protection of $1.5mm for IRAs. Legal liability protection of IRAs is regulated at the state level. Depending on the state, annuities may be unconditionally exempt from seizure by creditors or bankruptcy court. On the federal level, annuities held in a qualified account fall under the same $1.5mm bankruptcy limit as IRAs.

Homestead exemptions protect primary residences from creditors. The federal homestead exemption for bankruptcy is currently around $28k per individual, double that for married couples. States and even some counties differ in homestead exemption amounts. Exemptions may also have limitations based on factors like the property's acreage, whether the homeowner files for bankruptcy and how long the homeowner owned the home before filing for bankruptcy. Additionally, certain creditors may still have a valid claim to a home and include mortgage companies, home improvement lenders, spouses in the event of a divorce, and taxing authorities. Homestead exemptions may be unlimited or capped, depending on the state. For instance, California's maximum homestead exemption is $600k, Massachusetts's is $500k, Idaho's is $175k and Texas' is unlimited. New Jersey and Pennsylvania do not have homestead exemptions.

In summary, the amount of embedded protection depends on the state or county, the account and asset types, and the potential creditor. The strongest asset protection plans layer several levels of protection to shield assets, not just one. Layering strategies include property and casualty insurance, proper titling of assets, and the usage of entities like LLC's for rental properties and risky assets. Our view is to cover yourself for liability up to net worth and potentially more if you are a high earner. Umbrella liability insurance is dollar for dollar the 'biggest bang' for asset protection. Some may find that umbrella coverage for net worth is redundant. Instead, think of umbrellas as strengthening your liability shield with another cost-effective layer of protection.

Clients may build a multi-layer asset protection strategy with relative ease and cost by taking advantage of embedded safeguards, insurance, and business entities. Remember, it may only take one motivated creditor to seize your assets by piercing through a liability shield that relies on minimal protection.

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*Disclosures*