



**The Estate Planning
Council of
Rochester**

**The Hierarchy of Asset Protection...
Estate Taxation and Potential Reform**

Steven Schanker, Esq.
Schanker and Hochberg, P.C.

Monroe Golf Club
September 14, 2017

WELCOME!

The Hierarchy of Asset Protection...
Estate Taxation and Potential Reform

Please refrain from emailing, texting
or taking calls during the meeting



What is Asset Protection?

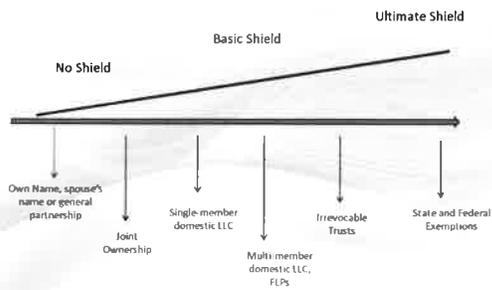
- Planning *strategies* to protect assets from the claims of Creditors, Litigants and Predators.
- A Shield that is effectuated *before* exposure to liability arises.



Why is Asset Protection Important?

- **Creditor:** any party that has a claim to assets of another party based on a credit arrangement or other right established by law.
- **Litigants:** any party who wishes to sue another.
- **Predator:** future ex-spouse, future ex-in-law, children, manipulators, and con-people.
- **Special Debtor Risk:** special needs/disabled beneficiaries, minors, high debtor risk people.

The Sliding Scale of Asset Protection



Exempt Assets

- Qualified Retirement Plans and IRAs
 - *Non-spousal* inherited IRAs are not Protected
- Primary Residence
 - Homestead Exemption (state-law specific)
- Annuities
 - partially as determined by the state
- Life Insurance



Retirement Plans; Qualified and Unqualified. What to Know!

- ERISA-Based (Qualified) Retirement Plans – unlimited protection under ERISA
 - Anti-alienation clause
 - Beware of “super-creditors”
 - Federal Tax Claims, Federal criminal fines, child support, alimony, criminal/civil judgment arising from fiduciary violation/crime against the plan



Non-Qualified Retirement Plans

- SEP IRAs, TRADITIONAL IRAs, ROTH IRAs:
 - Not as protected as ERISA-based plans, roll back to a qualified plan if able to.
 - Unlimited protection under *New York Laws* (as long as contribution rules followed)
- Non-ERISA Pension/Retirement Plans – limited protection as determined by the Court



Primary Residence – NY Rules

Monetary Limit	Counties
Up to \$150,000	Kings, Queens, New York, Bronx, Richmond, Nassau, Suffolk, Rockland, Westchester and Putnam
Up to \$125,000	Dutchess, Albany, Columbia, Orange, Saratoga and Ulster
Up to \$75,000	All remaining Counties

Annuities – NY Rules

- Court must undergo an analysis to determine what portion is treated as exempt considering the needs of the Debtor’s family and dependents
 - “just and proper amount”
 - “due regard for reasonable requirements” of the Debtor.
- Protection capped at \$5,000 if purchased within 6 months of declaring bankruptcy



Life Insurance in NY: A True Exempt Asset (*simple shield*)

- Cash value is exempt (unlimited)* (even if it is the cash value of a policy where you are the beneficiary [i.e., policy on spouse])
 - Great place to protect “exposed cash”
- Primary intent of exemption is to protect beneficiary’s interest in the policy as compensation for the loss of the life of the insured

*as long as requirements of NY Ins. Law Section 3212 are met

Life Insurance in NY: A True Exempt Asset (*simple shield*)

- BEWARE OF BENEFICIARY DESIGNATIONS:
 - Minors (under the age of 18)
 - Special Needs/Disabled, receiving “needs based” benefits or may need in the future
 - Spendthrifts
 - Creditor Risks
- FIX: Irrevocable Life Insurance Trust

Revocable Living Trusts: Illusory Asset Protection



Irrevocable Trusts: The Asset Protectors

- Charitable Remainder Trusts coupled with Life Insurance
- Qualified Personal Residence Trust
- Gift-giving Trust
- IRA Trusts
- ILIT
- SLATs
- IDGT's
- Self-Settled Trusts



FLPs and LLCs

- Similarities
 - Both legal entities under state law
 - Both have two levels of ownership
 - Beneficial tax treatment – “pass-through”

FLPs and LLCs

- Differences
 - Only the LLC can be used for *single owner*
 - The FLP's general partners have liability for the FLP (managing member has no such liability for LLC)
 - LLC's are recent
 - FLP's better for estate planning (other members unable to "oust" general partner vs. LLC non-managing members can "oust" managing member)
 - Start-up fees – publication, legal, state filing, annual tax filings
 - FLP particularly good for a real "Family Business" entity
 - LLC more commonly used for real estate

Protecting Your Home

- Qualified Personal Residence Trust
- The Debt Shield Concept –
 - moving assets from the vulnerable asset (the home) to a better protected asset (i.e. exempt asset)
 - Tenants by the Entirety
 - Medicaid Trust
 - Homestead rules

Professional Liability

- One can never seal him or herself from professional liability completely – you can just make it harder to get at your money



Divorce Protection

- Irrevocable Trusts
- Inherited assets that are segregated and not comingled with marital assets
- Pre-Nup
- Mid-Nup



Fraudulent Conveyance Rule

Actual Fraud (*difficult to prove*) –

Transfer is made within one year before filing for Bankruptcy and is made "with intent" to hinder, delay or defraud a creditor

Constructive Fraud –

Transfer made within one year before filing bankruptcy and grossly inadequate compensation given in exchange / made in the face of a known or probable liability which leaves Debtor insolvent

Statute of Limitations-

4 years from date of transfer *or* 1 year after transfer could have *reasonably* been discovered by a Creditor (*sniff test*)

"Super" Creditors

- Who are they and what are their "Super Powers"?



Additional Discussion Points

- “Umbrella Insurance”
 - Excludes intentional acts and professional liability
- Directors & Officer’s Insurance
 - Even for privately owned Companies
- Malpractice Insurance
- Give it all to the Spouse
 - Note Divorce statistics
- Transfer to child’s name
- Single Asset Entity

“Why do more? I am insured!”



Estate Taxation Update



Estate Tax? Carryover Basis? Gift Tax?

Thank You



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SPEAKER EVALUATION FORM

Speaker: Steven Schanker, Esq.

Date: Thursday, September 14, 2017 8:00 a.m. – 9:00 a.m. Monroe Golf Club

Topic: The Hierarchy of Asset Protection, Estate Taxation and Potential Reform

Please rate the following questions: Excellent --- Good --- Fair --- Poor

- | | | | | | |
|-----|--|-----|---|----|---|
| 1. | Content of Presentation | E | G | F | P |
| 2. | Written Materials | E | G | F | P |
| 3. | Instruction | E | G | F | P |
| 4. | Physical Setting of the Room | E | G | F | P |
| 5. | Technology Used for Presentation | E | G | F | P |
| 6. | Were the speakers knowledgeable in the subject area? | E | G | F | P |
| 7. | How useful will this information be in your professional duties? | E | G | F | P |
| 8. | Was the material presented new, innovative, relevant? | E | G | F | P |
| 9. | How would you rate this educational experience? | E | G | F | P |
| 10. | Would you like to hear these speakers on a related topic? | Yes | | No | |

If yes, what topic? _____

Do you prefer the meetings to be in the Morning? Time _____ Afternoon? Time _____

Do you prefer the meetings to be held at

Monroe Golf Club	Y	N
Locust Hill Country Club	Y	N
Downtown	Y	N
Suburban Location	Y	N
Other? Please specify:	_____	

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