

Fox Valley Estate Plan Council
Asset Protection Strategies Presentation
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1. What is asset protection?
 - a. The options we are going to discuss are not fraud
 - b. Not going to work if you have already been sued or have creditors already after you
 - c. If you retain control over the asset, harder to say it is protected
 - d. Different types of creditors: nursing home, spouse, banks, general public (those injured by your conduct – car accident, dynamite business)

Proactive planning strategies

2. Irrevocable Trusts
 - a. Timing – when is it appropriate to create?
 - b. Assets – what assets are appropriate to put in?
 - c. Five year look back
 - d. Step up in cost basis
 - e. What happens if we need to change terms?
 - f. What happens if trust needs to sell the real estate?
 - g. Can the cash in the trust be used to benefit the grantor? Income vs. principal
 - h. Occupancy agreements
 - i. Distributing the assets after death
 - j. Some attorneys are comfortable with grantor being the trustee or even a limited beneficiary of the trust – generally most are not
3. Revocable trusts
 - a. Parents created a revocable trust to hold assets for their children
 - b. Once the parents pass away, that sub-trust is irrevocable
 - c. Can have the appropriate provisions in that trust to protect those assets from the child's creditors
 - i. Mandatory vs. discretionary distributions
 - ii. Who is the trustee
 - iii. Spendthrift and special needs language
4. Special needs trusts
 - a. Can hold assets in a special needs trust that is drafted in a way to be exempt from being counted towards asset limits
 - b. These SNT's can be created within a revocable trust, irrevocable trust, or a standalone SNT

Reactive planning strategies

5. Medicaid planning strategies
 - a. Who are the appropriate clients for this type of planning?
 - b. Buying a vehicle and being able to give away exempt asset
 - c. Prepaying funeral
 - d. Disabled child
 - e. Caretaker child
 - f. Care contracts
 - g. Loan/gift and loan/gift and annuity

- h. Name on check rule
 - i. Legal separation for retirement accounts
 - j. Listing contract for real estate
 - k. Special needs trusts/Wispact
 - l. Testamentary discretionary trusts
6. Estate-tax exemption
- a. Wisconsin does not have inheritance tax
 - b. Can gift assets to children during lifetime to protect them while either staying under the annual limit or reporting on gift tax return
 - c. Estate-tax exemption and MA gifting rules are different – can gift \$17k a year for tax purposes without reporting it, but that is still a penalty for Medicaid purposes

Other options

7. Pre-nuptial agreements vs. post-nuptial agreements
- a. Pre-nups – helpful in divorce against spousal creditors and protecting assets prior to the marriage in the event of divorce
 - i. Must be done before marriage, full disclosure of financial assets
 - b. Post-nups – can still be useful for divorce or at death (i.e., leaving assets to someone other than your spouse if you die first); also helpful for protecting against estate recovery claims when MA is a factor
 - i. If there is evidence of dispute in the marriage prior to signing the post-nup, it may be invalidated
8. Insurance
- a. Can buy insurance policies to help protect against certain types of claims
 - b. Long-term care insurance, umbrella policies
9. Business structures
- a. LLC's, LLP's, Corporations, SC's
 - i. Certain types of businesses are required to be SC's and are not set up that way, so they don't have the protections they think they do
 - ii. Can shield from colleagues' misconduct, but not your own
 - b. Buy-sell agreements
10. Domestic asset protection trusts
- a. Wisconsin is not one.
 - b. Other states say that assets in a revocable trust receive similar protections to assets in certain types of business structures.
 - c. 18 other states allow for these types of trusts to protect assets
11. Off-shore asset protection trusts
- a. Create a Nevada trust to hold assets and have language in the trust that if you get sued, the situs of the trust changes to some other country
 - b. Not effective in Wisconsin