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FAQ's Regarding Asset Protection for Physicians and Dentists

ASSET PROTECTION FOR PHYSICIANS AND DENTISTS

Introduction: You have worked hard for what you own, and you want to keep it. An asset protection program simply employs legal techniques that deter others from taking, or in some cases, attempting to take your assets. The complexity of any asset protection program depends largely on what types of assets you have, and what type of work you do. Even something as ordinary as a car accident can give rise to a liability. If the liability exceeds your auto insurance policy limits, your assets will be at risk, unless you plan ahead.

1. What is the best business form for physicians to use to operate a medical practice?

Typically, physicians structure their medical practices as an S corporation or in some cases a C corporation. If the medical practice owns the building and/or expensive equipment, a separate LLC should be created to own the land and/or the equipment (see the LLC Q & A below). In addition, more asset protection may be available if the practice is structured as an LLC rather than an S corporation.

2. I have heard a lot about "living trusts." Would a living trust provide protection for my assets if I were sued?

No. While a properly structured living trust can provide privacy, and avoid the probate process, it provides practically no protection from your creditors. The trust's assets will generally be available to your creditors.

3. How can a limited liability company provide me with asset protection?

An LLC provides liability protection from two different directions. First, an LLC protects its members from any liability generated by property owned by the LLC. For example, if an LLC is formed and a rental property (such as the physician's office that is leased back to his/her practice) is contributed to the LLC and later someone falls down the steps of the office and sues the owner, it is the LLC that gets sued. Any liability belongs to the LLC. Only the assets owned by the LLC, in this case the building, are available to the plaintiff if the lawsuit is successful. The other assets owned by the members (probably one or more of the physicians) of the LLC are not available to the plaintiff.

Second, the assets owned by the LLC are protected from any liability of any member. For example, assume that, as in the previous example, several physicians have formed an LLC to own the building that the practice is in. Now, if one of the physicians is sued for malpractice and the suit is successful, the office building is protected. Although the creditor (in this case the patient) can sue the member (i.e. physician), the creditor cannot either take the physician's interest in the LLC, or force him/her to sell it. The interests in the LLC and the office building are protected.

4. Is it really true that the creditor cannot take the interest in the LLC?

