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This information is intended to be an overview of the law in Texas. The answers to these questions are not intended to be legal advice, but are provided in the spirit of education. You should consult with an attorney for legal advice based on your unique set of facts and circumstances.

Should I consider asset protection measures?

The decision to implement asset protection planning often depends on one's risk tolerance.

Today many doctors, accountants, corporate officers, as well as business and property owners face increased risks from lawsuits and extraordinarily high judgments awarded by juries. Insurance may no longer be adequate protection.

Asset protection is not a replacement for insurance. However, effective asset protection planning can protect some of your wealth if you experience a large claim or judgment that is not fully covered by insurance.

The best time to implement effective asset protection planning is when you are not faced with a claim or being sued. In fact, if you wait until you have reason to believe a creditor will seek to attach your assets, there is a great risk a transfer will be invalidated as fraudulent.

Our firm counsels its clients to integrate asset protection into tax and estate planning. There are many legitimate and compelling reasons to consider some of the available asset protection tools in your tax and estate planning.

What assets are protected from the claims of creditors?

Texas and federal exemptions protect certain assets from the claims of creditors. These exemptions, that include personal property up to an aggregate amount of $60,000 ($30,000 for a single person), certain personal property without regard to value, various homestead exemptions, life insurance and annuities as well as retirement benefits are addressed in the outline below. Effective planning will consider and incorporate these exemptions afforded under Texas and federal laws.

A. Under Texas law, the following items of personal property are exempt up to an aggregate amount of $60,000 of total property ($30,000 for a single person):

- Home furnishings, including family heirlooms
- Provisions for consumption
- Farming or ranching vehicles and implements;
- Tools, equipment, books, and apparatus, including boats and motor vehicles used in a trade or profession
- Wearing apparel
- Jewelry not to exceed 25 percent of the aggregate limitations
- Two firearms
- Athletic and sporting equipment, including bicycles
- A two-wheeled, three-wheeled, or four-wheeled motor vehicle for each member of a family or single adult who holds a driver's license or who does not hold a driver's license but who relies on another person to operate the vehicle for the benefit of the non-licensed person
- Certain farm animals and livestock
- Household pets
- The present value of any life insurance policy to the extent that a member of the family of the insured or a dependent of a single insured adult claiming the exemption is a beneficiary of the policy

B. In addition to the above property limited to the aggregate value of $60,000, the following items are also exempt without regard to value:

- Current wages for personal services, except for the enforcement of court-ordered child support payments (unpaid commissions for personal services are limited to 25 percent of the aggregate $60,000/$30,000 limit)
- Professionally prescribed health aids of a debtor or a dependent of a debtor
- Alimony, support, or separate maintenance received or to be received by the debtor for the support of a debtor or a dependent of the debtor

C. Under the homestead exemption, Texas law protects three types based on acreage and usage rather than value. The only creditors who can reach the homestead are mortgage holders and taxing authorities.

- The "urban homestead" exemption protects up to ten acres of land in an urban area (including improvements) if a family or a single, adult person uses the land as a homestead, irrespective of its value.

- The "business homestead" exemption protects land used by a family or single adult person in a business, which is located in the same urban area as the urban homestead, and there can be both an urban homestead and a business homestead if the combined acreage is not more than ten acres.

- The "rural homestead" exemption protects up to 200 acres of land (including improvements) if a family uses the land as a homestead or up to 100 acres of land (including improvements) if a single, adult person uses the land as a homestead.

D. Life insurance and annuities. Texas insurance code art. 21.21 exempts all money or benefits of any kind, including policy proceeds and cash values, to be paid or rendered to the insured or any beneficiary under any policy of insurance or annuity contract issued by a licensed insurance company.

E. Retirement benefits.

- Federal exemption. Pension benefits, profit sharing plans and other tax deferred ERISA qualified plans are all 100 percent exempt, to the extent the contributions to those plans are tax deductible under the Internal Revenue Code.

- Texas exemption. Texas also exempts 100 percent of all regular IRAs (to the extent the contributions were tax-deductible). Also exempt are Roth IRAs even though the contributions are not tax-deductible.

- ERISA qualified benefit plans. The maximum annual contribution one can make to a defined-benefit plan is one that would be projected to yield a benefit equal to the lesser of $160,000 for 2002 and 2003 (this amount may be adjusted for inflation), or 100 percent of the participant's average compensation for the three highest consecutive years. For the older client with few employees and extra funds sitting around as a target, this can be a great place to park otherwise non-exempt cash.

Why is asset protection incorporated into effective estate and business planning?

Estate and business planning has always focused on the management and preservation of wealth with the idea of passing it on to the next generation. If, as a result of unfortunate circumstances, that wealth disappears at the hands of creditors or other claimants, the plan has failed. A good plan will always anticipate what can go wrong, and implement protective measures accordingly. The litigiousness of our current society and the increase in the number of known economic risks makes assets protection planning an imperative consideration for the estate and business planner.

As with almost all aspects of planning, the adage of "plan early and plan often" holds true with respect to asset protection planning. Even if the estate or business planning client does not sense exposure to creditor issues, consideration of these issues is still warranted and may end up saving the integrity of the plan, if not in the generation of the client, then in subsequent generations.