



THE KIRWAN LAW FIRM

Integrated Wealth Planning and The Importance of Asset Protection

Simply put, Integrated Wealth Planning™ is a complete and customized process designed to meet all of the client's personal and financial goals and objectives by combining asset protection, estate planning, and tax and business succession planning. In other words, it helps you identify those things that are most important to you, gives you a roadmap for achieving them, and protects against losing the assets you need to live the lifestyle you have worked so hard to achieve. The Integrated Wealth Planning™ process is graphically depicted below.



Financial Planning

An important beginning point to both estate and asset protection planning is financial planning. Customized financial planning will take into account (among other things):

1. Retirement / Family Planning;
2. Defining Family Goals and Objectives;
3. Planning for Children and Future Generations;

4. Charitable Planning;
5. Cash Flow Analysis;
6. Analysis of Projected Income, Expense, Savings, etc.; and
7. Asset Growth / Risk Analysis (taking into account the individualized rate(s) of return necessary to meet one's goals and objectives).

Estate Planning

With a clearer understanding of (i) your personal goals and objectives and (ii) your current and projected financial picture, the next step is to establish a customized Estate / Tax Plan to:

1. Reduce Income and Estate Taxes;
2. Avoid Probate;
3. Formulate an Exit Strategy / Succession Plan for a Family Business;
4. Plan for Children and Future Generations; and
5. Build in Flexibility so the Plan can Adapt to Future Changes.

At this stage, the planning process should always begin by asking the question "What would I want to have happen in a 'perfect world' scenario?" It has been my experience that many people don't have a ready answer to this question. Helping you understand your options is a crucial part of my job. You may need to address business succession planning, risk assessment and asset protection planning, and how best to leave assets to your children and more remote progeny. In doing so, most people are surprised just how flexible trusts are and how leaving assets in trust is far more advantageous than outright bequests even if giving the child control is a specific objective of yours.

Dynastic trusts can shelter trust assets from estate taxation as they pass from generation to generation. These trusts can also be drafted to provide the beneficiary with a means to protect those assets from the claims of creditors. In fact, you can create asset protection trusts for one or more of your children that is more flexible and more protective than they could create for themselves. Incentive trusts (which can also be dynastic) can be drafted to allow you to encourage your children and/or other beneficiaries to accomplish the goals and objectives most important to you. These goals and objectives can range from obtaining a college education, exercising financial prudence, discouraging frivolous spending habits, being socially responsible, and maintaining a job and striving for professional excellence, just to name a few (and these examples really only scratch the surface). Children can also be given varying degrees of control over their trust which can change over time, upon the occurrence of certain events, and/or accomplishing certain goals. Through proper drafting, I help people create a customized plan to achieve virtually any goal or objective they may hold dear.

Asset Protection Planning

Typical planning has oftentimes ended with financial and estate planning (and often that planning has been grossly oversimplified and falls seriously short of truly meeting one's

goals and objectives). Even good financial and estate planning, however, is of little use if your assets are lost to a judgment creditor.

Asset Protection Planning can be defined as organizing your assets, affairs, and business structures:

1. At a time when there are no legal actions pending, threatened, or expected;
2. With the goals of:
 - a. Protecting your assets from loss in the event of any given peril; and
 - b. Reducing the likelihood of being the target of a law suit or other legal action which would require you to spend time and money, and put your emotional well-being at risk;
3. While maintaining control over and enjoyment of the protected assets.

Sound Asset Protection Planning does NOT involve any of the following:

Hiding Assets / Secrecy. A proper asset protection plan will never rely on secrecy or hiding your assets. Relying on a plan that will require you to do anything but be 100% honest about what your assets are and the planning you have engaged in is not real asset protection planning and may have serious negative implications. Also understand that “secrecy planning” rarely works given the broad discovery rights a plaintiff attorney has after a judgment has been awarded.

Defrauding Existing Creditors. The maximum benefit from asset protection planning is achieved if there are currently no lawsuits pending, threatened, or expected. If a creditor is on the horizon, your planning choices are significantly limited. Therefore, the time to plan is now when the proverbial skies are blue and no creditors have been identified.

Evading Payment of U.S. Income Taxes. Many people look to foreign asset protection planning in hopes of avoiding paying U.S. income taxes. A proper foreign asset protection structure will be income tax neutral. Beware of anyone who encourages you to set up a structure using a tax haven country to shelter income from U.S. taxation. These heavily marketed plans are scams and can cause you significant legal problems.

Why is Asset Protection Planning So Important?

Because life is full of risk. Everyone agrees that it would be foolish to work hard to earn enough money to buy a beautiful home and not insure it against the risk of fire, flood, hurricane or other similar perils, however, we also work hard to amass enough assets to “buy” financial security for ourselves and children and do little or nothing to protect ourselves against losing that financial security in the case of liability that could stem from a myriad of sources. Below is a short, and incomplete, list of some of the principal sources of liability every person may face.

1. Law suits including:
 - Professional Malpractice;
 - Divorce;

- Wrongful Termination;
 - Sexual Harassment;
 - Automobile Liability (including when someone else drives your car);
 - Suits Arising Out of Owning Real Property (i.e., Slip and Fall, Environmental, etc.);
 - Suits Stemming from the Actions of Others (i.e., employees, children, subcontractor, joint-tenant, partner, etc.);
 - Suits Arising Out of Being a Director or Officer of a Company;;
 - Contractual Liability (i.e., personal guaranties, leases, business agreements, etc.); and
 - Negligence – The number of negligence theories could (and do) fill several books (books read by plaintiff’s attorneys).
2. Investment Risk;
 3. Banking Risk;
 4. Government Stability; and
 5. Any Number of Other Risks Particular to an Individual’s Personal Situation.

The fact that these risks exist are made even worse when you consider the following:

1. The Deep Pocket Mentality. Plaintiff’s attorneys are continually expanding theories of liability to reach the deep pocket.
2. A Less than Perfect U.S. Judicial System. While our judicial system is arguably one of the best, if not the best, in the world, it is not without its faults. Our legal system simply cannot be trusted to return fair, unbiased verdicts. A “Jury of Your Peers” is rarely that, result-oriented judges and juries are often given broad discretion to interpret the law in a manner which is unfavorable to you and oftentimes unjust.
3. Outrageous Jury Awards. Outrageous jury awards are becoming common place.
4. Problems with Traditional Insurance. Traditional insurance can be problematic. It often provides an incentive to sue (easy money), contain deductibles and numerous exceptions to coverage, and simply is not available for all types of potential liability. In addition, insurance companies do not increase their profitability by paying claims. Understand that in some circumstances certain types of insurance coverage is extremely advisable (i.e., home owners insurance, automobile insurance, certain “umbrella” policies, etc.).
5. If You Sued You Lose. Oftentimes, once you've been sued you've lost. Solid asset protection can discourage people from suing at the outset.

A sound Asset Protection Plan should be thought of as an insurance policy that:

1. Covers almost any risk you will ever face;
2. Has low annual premiums and no deductibles; and
3. Contains few or no exceptions to coverage.

If you disagree with the need for asset protection planning, remember that you are literally betting everything you own that nothing will happen to you.

Conclusion

It has been said that “happy is the one who knows what to remember of the past, what to enjoy of the present, and what to plan for the future.” To quote Napoleon Hill “Reduce your plan to writing. The moment you complete this, you will have definitely given concrete form to the intangible desire.”

Integrated Wealth Planning helps ensure that you achieve those things most important to you, leave a legacy that you design, and protect you’re the financial independence and lifestyle you have worked hard to achieve.