Top 10 Asset Protection Tips for Physicians and Dentists

By Nicholas E. Papasifakis / Apr 20, 2020

Private practice physicians and dentists are at risk for malpractice claims. Their earning capacity also makes them an attractive target for other claims as they have the potential to be high wage earners. Many of these professionals have or will acquire significant personal wealth, which needs to be protected to the greatest extent possible. While there are certainly other asset protection strategies available, such as foreign asset protection trusts, equity stripping, captive insurance companies, etc., these are the top 10 asset protection tips for any physician and dentist to consider.

1. Formation of Business Entity for Professional Practice

One of the first important decisions a physician or dentist should make is selecting the proper form of business entity for his or her professional practice. While forming a business entity for the professional practice cannot limit a professional's personal liability from a malpractice claim related to his or her work, it will help shield the professional's personal assets from other creditors of the practice and certain malpractice claims against other physicians, clinics or hospitals involved in the process. Selecting the appropriate business entity is also important in maximizing income tax savings and for business succession planning purposes.

2. Formation of Business Entities for Other Business Assets

In many instances, a physician or dentist will also own other business assets, such as medical equipment or the building that the practice operates from. A physician or dentist should consider sheltering these other business assets in separate limited liability companies and leasing them back to the professional practice. In doing so, it helps protect these business assets from the claims against the professional or the professional practice and may reduce self-employment tax. This technique is also a good estate planning tool if the physician or dentist is in the position to make gifts to his or her children, the entity owning the "dirt" is an ideal asset to gift to the children, outright or in trust, to shift income from the parents to their children (Tip No. 9).

3. Adequate Liability Insurance

In any lawsuit, insurance is the first line of defense. In addition to having malpractice insurance, physicians and dentists also should ensure their home and auto insurance coverage is adequate to help protect them against personal claims or claims against dependents. These professionals should also consider an umbrella policy, which may cover the coverage gaps in their other policies or claims that exceed the policy limits.

4. Pre-Marital Asset Protection Planning

A physician or dentist may be more likely to lose assets in a divorce than in a malpractice suit. Therefore, it is important to explore a pre-nuptial agreement or Domestic Asset Protection Trust (Tip No. 10) before getting married. These pre-marital asset protection tools will assist in protecting the separate property of these professionals in the event of divorce.

5. Baseline Estate Planning

Estate planning is an important part of protecting assets for any physician or dentist. At a minimum, creating even a baseline estate plan, including a Will, Revocable Living Trust, Durable Power of Attorney and Designation of Patient Advocate, will ensure the assets of these professionals are protected and distributed appropriately in the event of death or incapacity.

6. Tenants-by-the Entireties Property

If a physician or dentist is already married, certain assets, such as real estate, can be titled in the name of both spouses as tenants-by-the entireties. If an asset is titled in this manner, it cannot be reached by the creditors of only one spouse. This is a simple and easy tool to protect a principal residence from the creditors of a professional spouse.

7. Qualified Retirement Plans and IRAs

Qualified retirement plans and certain IRAs are protected from creditor claims to a certain extent. Physicians and dentists should look to maximize their contributions to their retirement plans as it is an easy way to maximize tax-deferred growth while also protecting assets from potential creditors.

8. Formation of Business Entities for Investment Assets

If a physician or dentist owns any investment assets, separate business entities should be established for these investment assets. For example, if a physician or dentist owns a rental property or vacation home, the real estate should be transferred to separate limited liability companies.

9. Gifting Assets

Gifting strategies can be utilized by physicians and dentists both to protect assets from creditors and also as an estate planning tool to reduce estate tax at death. Gifts can come in the form of an outright gift of an asset to a third party, or more advance methods could be used, such as (i) gifting assets to an irrevocable trust for the benefit of others, or (ii) establishing a family limited partnership or family limited liability company to hold certain assets and gifting non-voting interests in those entities to others. Additionally, since the cash value of a life insurance policy is generally not protected from creditors of the policy owner, a physician or dentist may consider establishing an Irrevocable Life Insurance Trust to own a policy insuring his or her life and making annual gifts to pay policy premiums.

10. Domestic Asset Protection Trust

A Domestic Asset Protection Trust is a special type of irrevocable trust which allows the trust creator (the "settlor") to transfer assets to the irrevocable trust and still retain the ability to receive distributions from the trust. This is the ultimate asset protection tool. It provides the settlor with the ability to receive the benefit of these assets, and it will shield the assets from creditors of the settlor. Most physicians and dentists find this much more attractive than gifting or transferring assets out of their name as they can still maintain a beneficial interest in the assets and a certain level of control over the investment and distribution decisions. Domestic Asset Protection Trusts can also be utilized as a backstop or alternative to a pre-nuptial agreement and can shield pre-marital assets from divorce.