Asset Protection

protecting your money, now and in the future

–Gerald M. Morello Jr.

Asset protection (a fancy way of saying methods to protect your money and assets) is something that is on everyone's minds. I constantly find that people want to know how they can protect their money from future creditor claims. They also want to know how they can ensure that their retirement "nest egg" will remain secure as they get older. Lastly, many want to feel confident that the money and assets they will be leaving to their children will also be protected. With these issues in mind, I have put together a brief list of asset protection and estate planning issues that you should think about to help you protect your money.

asset protection planning strategies

ASSETS EXEMPT FROM CREDITORS

One of the keys to protecting yourself from a loss of assets to creditors is to effectively use the exemptions from creditors available under state and federal law. These exemptions provide that certain assets cannot be reached by creditors and are, therefore, protected from your creditors and potential liabilities. Michigan law provides that the following assets can be protected from creditors:

- ✔ Tenancy by the Entirety Property. Tenancy by the entirety is the ownership of certain property by a husband and wife as joint tenants with rights of survivorship. Upon the death of a spouse, the surviving spouse inherits the entire interest in the property. During the lifetime of a husband and wife, each spouse is deemed to own the entire interest in the property. Therefore, a creditor of one spouse may not attach tenancy by the entireties property.
- ✔ Pension and Profit Sharing Plan. The Michigan exemption statute protects qualified plans, individual retirement accounts and annuities except for contributions made within 120 days of a bankruptcy filing.
- ✔ Disability Insurance. All monies paid, provided or allowed to be paid by an insurance company on account of the disability of any insured person due to injury or sickness are exempt.
- ✔ Personal Items. Only family pictures and clothing are exempt. Household goods and furniture are exempt only to the extent that their value does not exceed $1,000.00. All other personal property is not protected.
- ✔ Miscellaneous. Michigan law contains other exemptions. If you have any questions regarding a specific item of property, please contact our office.

IRREVOCABLE TRUSTS AND GIFTS

Another method for you to avoid creditors involves the transfer of assets to your spouse or your children. If you make a transfer to your spouse, such property would not be subject to the claims of creditors, unless such transfer is deemed to be a "fraudulent conveyance." In a nutshell, a fraudulent conveyance occurs when a person makes transfers to another, without fair consideration, in order to "hide" assets. If you transfer a portion of your assets to another individual, you will be considered insolvent after the transfer if the present value of your remaining assets is less than the amount that will be required to pay the probable liabilities on your existing debts. If you transfer a portion of your assets to an irrevocable trust for the benefit of your children (or other individuals), or make a gift to your children, and the transfer is not a fraudulent conveyance, such assets will not be subject to the claims of creditors. Irrevocable Trusts are a way to facilitate such transfers, and provide a significant estate tax benefit; therefore they should be considered by you for estate tax purposes.

MAINTAIN PROPERTY AND CASUALTY INSURANCE, UMBRELLA POLICIES AND LONG TERM CARE INSURANCE

When available at reasonable rates, insurance policy coverage is effective at guarding against a number of differing foreseeable risks. In particular, long term care insurance is crucial to ensure that you will be protected in the event of a prolonged nursing home stay. The average cost of residing in a nursing home exceeds $6,500 per month. Without insurance to cover this cost, you could be forced to pay for this expense out of your own pocket, up to the point that you become impoverished. Only after you spend down all of your assets will you be eligible for state assistance, such as Medicaid. Long term care insurance can help you pay for the rising

costs of health care, and also make sure that you will have something left to pass to your children.

estate planning

One of the keys to protecting your children and grandchildren from a loss of assets after you pass away is to have a comprehensive estate plan in place.

New Michigan Trust Code – Reviewing your Estate Plan

On April 1, 2010, the new Michigan Trust Code will go into effect. This law will change how trusts are administered in many respects. In other ways, the new law just reinforces general principles that already apply. If you have established a Revocable Living Trust to govern how your property will be distributed upon your death, it may now be prudent for you to have the document reviewed in light of the new changes in the law.

CHANGES IN YOUR FAMILY SITUATION

In addition, if there has been a change in your family's financial picture, as well as its social harmony, it may be time to review your estate plan. First, it is prudent to think about the key appointees within your documents. You should know whether the people that you want to handle your affairs when you pass away, or become incapacitated, are named in your documents. Also, review whether you are leaving your hard-earned money and assets to the people you still want to receive those things. Third, think about any new people (baby or adult) who may have become a member of your family, and know whether they are provided for in your documents. Fourth, understand any restrictions on the inheritance for your beneficiaries (if there are any), and know whether they are adequate based on your beneficiaries' current circumstances. Lastly, if you do not have a comprehensive estate plan in place, you should think about having one completed. Spending some money now to properly plan can save your family and estate much more money in the future.

SPENDTHRIFT TRUSTS AND DISCRETIONARY TRUSTS

For purposes of asset protection, it is important to know the difference between regular trusts, spendthrift trusts, and discretionary trusts. In particular, a spendthrift trust will protect a beneficiary's share of trust assets from creditors and bankruptcy, all except spousal or child support, creditors who have provided a value added service to the trust, or a claim by the State of Michigan or the federal government. A discretionary trust protects a beneficiary's share from all creditors and bankruptcy. Therefore, if you have a revocable living trust, or are the beneficiary of someone else's trust, it may be the ideal time for you to have the trust language reviewed to ensure that it adequately protects beneficiaries.

GIFTING

The current annual federal gift tax exclusion amount for 2010 is unchanged from last year, and is $13,000 per beneficiary per year. This means that a person can give a child, grandchild, or other beneficiary up to $13,000 in gifts in year 2010 without those gifts being subject to the federal gift tax (a married couple can jointly give up to $26,000 in gifts to a beneficiary). If it appears that a person is going to have a taxable estate when he or she dies (we currently have no Federal Estate Tax, but in 2011 a person may only exempt $1.0 million from that tax), I often recommend that he or she begin a gifting program to spend down their estate. Essentially, you can pre-pay to your children, grandchildren, and other beneficiaries their future inheritance, without any current tax penalty, thereby allowing yourself the avoidance of future estate taxes. But remember, if you do not make gifts in a given year, you lose your ability to use that year's gift tax exemption amount. The annual Federal Gift tax exclusion amount for next year will remain at $13,000 per beneficiary.

CHARITABLE GIFTING

In addition to the annual gift tax exclusion, an unlimited deduction is available for gifts to a qualified charity. Other than for gifts to a subdivision of government or a church, a charity should have an exemption letter from the Internal Revenue Service indicating that gifts are eligible for the gift tax charitable deduction if it is planned for the gift to be deductible.

seek out a professional

As always, I encourage you to speak with your financial advisor, tax professionals, and attorney to fully understand all asset protection, estate planning, and tax planning issues mentioned in this article. Remember that there are many issues to address, so make sure you are fully informed of what is right for you. If you would like a copy of any prior articles I have written, please contact our offices. ■

For further information or to schedule an appointment, please contact Morello Law Group, P.C. and Gerald M. Morello, Jr., Esq. at (734) 281-6464 or on the web at morello@morellolaw-group.com.

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