35th Annual

Tax Symposium

THE ACCOUNTANT AND CREDITOR PROTECTION FOR YOUR CLIENTS

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Practical asset protection planning for the CPA

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ACCOUNTANT
SUPERHERO

ASSET PROTECTION OPPORTUNITIES FOR YOUR CLIENTS



WHAT IS ASSET PROTECTION

- Legally structuring assets so a creditor cannot seize them
- Many steps can be taken without a lawyer
- More complicated procedures require an attorney to prepare documents



Timing is everything:
planning works
before
a claim arises,
not after

SITUATIONS CREATING THE NEED FOR PROTECTION

Any of these can put a client's personal and business assets at risk:

- Divorce
- Malpractice Claim
- Breach of Contract
- Breach of Fiduciary Duty
- Vehicle Accidents
- Business Disputes
- Tax Debts
- Mortgage Debts

WHY ASSET PROTECTION BELONGS IN THE CPA'S ADVISORY ROLE

The CPA is uniquely positioned to spot exposure — and act early.

Sees the Whole Picture

- Tax returns, K-1s, 1099s, depreciation schedules, and financials reveal exposure every year
- Attorneys and advisors usually see only part of it — and less often

Proactive Advice Sets You Apart

- Raising risks before a lawsuit, divorce, or judgment
- Turns the tax preparer into a trusted advisor

Timing Is Everything

- Planning works before a claim arises — not after
- Know what you can do alone vs. when to involve an attorney

INSURANCE COVERAGE: THE FIRST LINE OF DEFENSE

How Umbrella Coverage Works

- Sits on top of auto and homeowners liability; pays once those limits are used up
- Sold in $1M increments; cost per added million usually declines
- Cost estimate: ~$150–$500/yr for $1M; ~$2,000/yr for $10M (high-net-worth family)
- Typically excludes business liability, professional malpractice/E&O, intentional acts, and workers' comp

How Much Coverage?

- Benchmark: at least equal to **net worth**
- Conservative: add several years of income plus a risk buffer

Example

Net worth	**$800,000**
4 years of income ($200K/yr)	**$800,000**
Buffer: teen driver + pool	**$1,000,000**
Total → rounded up	**$2.6M → $3M**

INSURANCE: THE CPA'S ROLE

What the CPA Can Do — No Attorney Needed

- Scan returns for red flags: Schedule E rentals, boat/RV, driving-age dependents, Schedule H, board seats, public profile
- Request auto, home, and umbrella declarations pages with the organizer
- Compare to benchmarks; flag gaps in writing
- Review coverage periodically
- Refer to an independent insurance professional

PROPER TITLING OF ASSETS

Forms of Co-Ownership

Joint Tenancy (JTWROS) / Tenancy in Common

Little protection from a co-owner's creditors

Tenancy by the Entireties (TBE)

Married couples only — strong protection against a creditor of just one spouse

Michigan TBE Rules

- Spousal real estate presumed TBE unless the deed says otherwise
- Exempt from execution for one spouse's debts — not joint debts
- Stocks, bonds, notes payable to spouses get TBE treatment; joint bank accounts likely not covered
- Tip: title accounts expressly "as tenants by the entireties"
- A one-spouse revocable trust destroys TBE protection

LIMITS OF TBE & PRACTICAL TITLING ISSUES

Where TBE Protection Ends

- **Federal tax liens** can attach (*U.S. v. Craft*, 2002)
- **Divorce:** TBE real estate becomes tenancy in common
- **Death:** passes to survivor free of decedent's creditors — then exposed to survivor's
- **Late retitling** after a claim arose can be set aside under the UVTA



CPA Titling Review

- Avoid parent–child joint ownership, especially vehicles
- Hold each rental property in its own LLC; move real estate out of the operating business
- Check titling on 1099-INT/DIV, brokerage statements, and deeds
- Flag a high-liability spouse holding assets in his or her own name
- Attorney handles deeds, transfers, and retitling

RETIREMENT ACCOUNTS & MICHIGAN'S EXEMPT PROPERTY STATUTE

Two shields: **MCL 600.6023** outside bankruptcy; **11 U.S.C. § 522** in bankruptcy

IRAs

- Traditional and Roth exempt from levy — MCL 600.6023(1)(j)
- Exceptions: contributions within 120 days of bankruptcy, divorce/support orders, excess contributions
- Bankruptcy cap: $1,711,975 (4/1/2025–3/31/2028); rollovers generally excluded

Inherited IRAs

- Not exempt "retirement funds" — Clark v. Rameker (2014)
- Michigan statute does not protect them either
- A properly drafted spendthrift trust can protect the account

ERISA Plans

- 401(k), 403(b), profit-sharing, DB plans — MCL 600.6023(1)(k)
- No dollar cap in bankruptcy — Patterson v. Shumate (1992)
- Protection may be lost once funds reach checking, a revocable trust, or an estate

REVIEWING BUSINESS BALANCE SHEETS FOR VULNERABILITIES

Soft Spots Creditors Look For

- Excess cash in the operating company
- Undocumented owner, shareholder, or intercompany loans
- Real estate and equipment inside the operating entity
- Undercapitalization and commingled accounts
- Personal guarantees in the financial statement notes
- Trust fund recovery penalty exposure (26 U.S.C. § 6672)



CPA Recommendations

- Sweep excess cash via authorized, recorded distributions
- Move real estate/IP to a holding entity with an arm's-length lease or license
- Document loans: written note, interest rate, repayment schedule
- Book every transfer as a distribution, loan, or compensation

Fraudulent transfer caution: transfers need reasonably equivalent value while solvent (MI UVTA). Restructure when the balance sheet is strong.

DIVORCE PLANNING

Michigan Property Division Basics

- Court divides property acquired “by reason of the marriage”
- Each spouse generally keeps separate property
- Separate property reachable based on need or contribution
- **Commingling** can convert separate property into marital property
- Prenups and postnups are enforceable but cannot strip the court of its equitable power



What the CPA Can Do

- Trace and document inherited and premarital funds
- Keep separate accounts separate — no inheritance into joint accounts
- Document business value as of the date of marriage
- Suggest a prenup before a marriage or remarriage

Attorney drafts the prenup/postnup; each spouse needs independent counsel.

CORPORATIONS AND LLCS



The Liability Shield

- LLC members, limited partners, and shareholders generally not liable for entity debts
- Inside liability blocked by the entity shield
- Outside liability: charging order is the exclusive remedy in an LLC (MCL 450.4507(6))



Veil Piercing

- Three-part test: mere instrumentality; used for fraud or wrong; unjust loss
- Available even after judgment against the entity
- 100% ownership alone does not justify piercing



Annual Entity Hygiene

- Own bank account; no personal expenses
- Adequately capitalized and insured
- Contracts signed in entity name
- LARA annual statements filed; good standing
- Written operating agreement; documented distributions and loans
- Separate risk activities in separate entities

IRREVOCABLE TRUSTS

- Third-Party Spendthrift Trusts
- Domestic Asset Protection Trusts



ACTION CHECKLIST FOR THE CPA



Engagement & Intake

- One-page asset protection intake in the engagement letter or organizer
- Cover titling, insurance, entities, and life events
- Request insurance declarations pages every year



Annual Review

- Compare coverage to benchmarks; flag gaps in writing
- Check titling on 1099s, brokerage statements, deeds
- Separate owner vs. inherited IRAs; keep rollover records
- Review balance sheets; run entity hygiene checklist



Life Events & Referrals

- Document inherited and premarital assets separately
- Ensure probate avoidance has not reduced protection
- Flag marriages, liquidity events, new businesses, teen drivers
- Refer trust candidates while the balance sheet is strong



THE BEST TIME TO PLAN IS BEFORE THE CLAIM ARISES.

THE SECOND-BEST TIME IS TODAY.

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QUESTIONS

Submit questions for presenters

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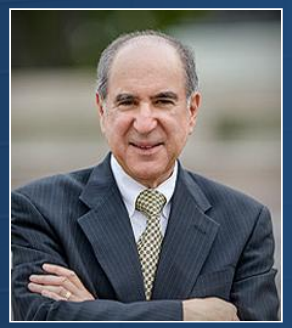
THANK YOU



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