THE ACCOUNTANT AND CREDITOR PROTECTION FOR YOUR CLIENTS

By: Robert D. Kaplow, Esq.

I. WHAT IS ASSET PROTECTION?

A. Simply, asset protection is the process of legally structuring assets so that the assets cannot be seized by a creditor.

B. There are many steps that can be taken without the need for a lawyer to be involved.

C. Some of the more complicated procedures do require a lawyer to prepare documents.

II. SITUATIONS CREATING THE NEED FOR ASSET PROTECTION.

A. Divorce

B. Malpractice Claim

C. Breach of Contract

D. Breach of Fiduciary Duty

E. Vehicle Accidents

F. Business Disputes

G. Tax Debts

H. Mortgage Debts

III. WHY ASSET PROTECTION BELONGS IN THE ACCOUNTANT'S ADVISORY ROLE

A. The accountant sees the whole financial picture every year.

1. Tax returns, K-1s, 1099s, depreciation schedules, and financial statements show where each client is exposed.

2. Estate planning attorneys and financial advisors usually see only part of the picture, and less often.

B. Proactive advice sets the accountant apart.

1. Raising risks before a lawsuit, divorce, or judgment turns the tax preparer into a trusted advisor.

2. Every topic below separates what the accountant can do independently from when to involve an attorney.

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

IV. INSURANCE COVERAGE: THE FIRST LINE OF DEFENSE

A. How umbrella coverage works.

1. An umbrella policy sits on top of auto and homeowners liability coverage and pays once those limits are used up.

2. Umbrella policies are generally sold in $1 million increments, are relatively inexpensive, and the cost per added million dollars usually goes down. It is my understanding that a $1 million umbrella policy typically costs about $150–$500 per year, while a $10 million umbrella policy for a high-net-worth family often costs about $2,000 per year.

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3. Umbrella policies typically exclude business liability, professional malpractice/E&O, intentional acts, and workers' compensation. Business owners and professionals need separate commercial or professional coverage.

B. Rules of thumb for how much coverage.

1. Common benchmark: coverage at least equal to net worth.

2. A more conservative approach adds several years of income plus a buffer for major risk factors.

   a. Example: $800,000 net worth + $800,000 (four years of income at $200,000) + $1,000,000 buffer for a teen driver and a pool = $2.6 million, rounded up to $3 million.

3. Carriers commonly require minimum underlying limits of about $250,000/$500,000 auto bodily injury, $100,000 property damage, and $300,000 homeowners liability.

C. Michigan-specific points.

1. Since the 2019 no-fault reform, Michigan auto policies default to $250,000/$500,000 bodily injury limits unless the insured signs the Michigan Department of Insurance and Financial Services (DIFS) choice form to pick lower limits (floor: $50,000/$100,000).

2. The DIFS form warns that lower limits may affect umbrella eligibility.

3. At-fault drivers can now be sued for medical expenses above the injured person's Personal Injury Protection (PIP) coverage.

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D. Verify named insureds on the policy.

1. Make sure that immediate liability and property protection insurance is in place when property transfers – especially from an estate or trust to the beneficiary.

2. Insurance company will only pay the named insured, even if the owner was the intended beneficiary to own the property.

E. What the accountant can do without an attorney.

1. Review the client's income tax return for red flags: Schedule E rentals, a boat or RV on the depreciation schedule, dependents of driving age, household employees (Schedule H), board seats, and a public profile.

2. Ask for auto, homeowners, and umbrella declarations pages as part of your annual tax organizer, just like you request the 1099s.

3. Compare limits against the benchmarks above and flag gaps in writing.

4. Periodically review coverages. What may have been adequate coverage years ago may no longer be adequate.

5. Refer the client to an independent insurance professional. An attorney is not needed for this step.

V. PROPER TITLING OF ASSETS

A. Forms of co-ownership.

1. Joint tenancy with right of survivorship and tenancy in common give little protection from a co-owner's creditors.

2. Tenancy by the entireties (TBE) is available only to married couples and gives strong protection against a creditor of just one spouse.

B. Michigan TBE law.

1. Real estate held jointly by spouses is presumed to be TBE unless the deed says otherwise.

2. TBE property is exempt from execution on a judgment against only one spouse but is not exempt for joint debts. MCL 600.6023a.

3. Bonds, stock certificates, mortgages, promissory notes, and other evidences of indebtedness payable to spouses get TBE treatment. MCL 557.151.

   a. Commentators read the statute narrowly. Joint bank accounts are not covered.

   b. Practice tip: title brokerage, vehicle, and similar accounts expressly "as tenants by the entireties.".

4. Be careful of transferring TBE property to a trust.

   a. A transfer to a revocable trust of one spouse would destroy the TBE protection.

   b. Transfer to a Michigan Asset Protection Trust can continue the TBE status. MCL 700.1047(6).

   c. It is unclear whether a transfer to a joint trust and not as part of a Michigan Asset Protection Trust continues the TBE status of the property. Most commentators believe that the TBE property loses that status if transferred to a joint trust.

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C. Limits of TBE protection.

1. Federal tax liens: a federal tax lien can attach to a spouse's interest in TBE property. United States v. Craft, 535 U.S. 274 (2002). The IRS may force a sale and split the proceeds equally with the non-debtor spouse. United States v. Barczyk, No. 10-1498 (6th Cir. 2011).

2. Divorce: TBE real estate becomes tenancy in common. MCL 552.102.

3. Death: property passes to the surviving spouse outside probate, free of the deceased spouse's creditors, but is then exposed to the survivor's creditors.

4. Late retitling: a transfer into TBE after a creditor's claim arose was set aside under Michigan's Uniform Voidable Transactions Act. *Caldwell Co. v. Yousif*, No. 23-cv-10976, 2025 U.S. Dist. LEXIS 41989 (E.D. Mich. Mar. 7, 2025).

5. Community property.

   a. Michigan is not a community property state.

   b. For clients who moved from community property states, the Uniform Disposition of Community Property Rights at Death Act, MCL 557.261 et seq., may preserve community character at death. Flag these clients.

D. Titling issues.

1. Avoid joint ownership of property (especially vehicles) between parent and child. If child is in an accident, parents' assets are liable to creditors.

2. Review real estate ownership – especially of multiple real estate properties.

   a. Have each property owned in a separate limited liability company.

b. Real estate owned in an operating business should be transferred out of the business into a separate LLC.

c. Verify liability insurance on all properties – verify named insured and amount of coverage.

E. What the accountant can do without an attorney.

1. Check how 1099-INT and 1099-DIV forms and brokerage statements are titled (one name, Trust, "JTWROS", or TBE).

2. Check the county register of deeds for the titling of real estate.

3. Note rental property held personally rather than in an entity.

4. Flag a high-liability spouse (physician, contractor, business owner) who holds assets in his or her own name.

5. The attorney handles deeds, transfers, and retitling documents.

VI. RETIREMENT ACCOUNTS AND MICHIGAN'S EXEMPT PROPERTY STATUTE

A. Two shields.

1. Outside bankruptcy, MCL 600.6023 controls what a judgment creditor can levy.

2. In bankruptcy, 11 U.S.C. § 522(b)(3)(C) and § 522(d)(12) exempt retirement funds in tax-exempt IRC 401, 403, 408, 408A, 414, 457, and 501(a) accounts; Michigan debtors may choose the federal or state exemptions.

B. IRAs.

1. Traditional and Roth IRAs and their distributions are exempt from levy and sale under MCL 600.6023(1)(j). Exceptions include contributions within 120

days before bankruptcy, amounts subject to divorce or child-support orders, and contributions above the deductible amount under IRC 408; rollovers from qualified plans and 403(b)s do not count.

2. In bankruptcy, protection is capped at $1,711,975 for April 1, 2025 through March 31, 2028 under 11 U.S.C. § 522(n); qualified-plan rollovers generally do not count toward the cap, so keep rollover records and consider a separate rollover IRA.

C. Inherited IRAs.

1. Clark v. Rameker, 573 U.S. 122 (2014), held that a non-spouse inherited IRA is not exempt “retirement funds”; Michigan’s statute does not protect inherited IRAs either.

2. A properly drafted spendthrift trust for a child can protect the inherited IRA account, while naming the child outright may not; a surviving spouse’s rollover to the spouse’s own IRA is generally treated differently. Individualized planning is attorney work.

D. ERISA plans.

1. ERISA-covered 401(k), 403(b) annuity, profit-sharing, defined-contribution, and defined-benefit plans receive stronger protection under MCL 600.6023(1)(k), subject to the same 120-day and divorce or child-support exceptions.

2. Under Patterson v. Shumate, 504 U.S. 753 (1992), an ERISA plan’s anti-alienation clause keeps the participant’s interest out of the bankruptcy estate with no dollar cap; state protection applies only to ERISA plans.

3. Solo 401(k)s and some governmental or church 403(b)s may not qualify outside bankruptcy, although federal bankruptcy protection covers them. Protection may disappear once funds reach checking, a revocable trust, or an estate.

E. Other Exemptions.

Other MCL 600.6023(1) exemptions include: family pictures; required arms; wearing apparel; six months of provisions and fuel; household goods, furniture, utensils, books, and appliances up to $1,000; a church pew; burial plots; **10 sheep, 2 cows, 5 swine, 100 hens, 5 roosters and sufficient hay and grain for properly keeping the animals and poultry for 6 months**; trade tools and equipment up to $1,000; disability benefits; a homestead up to $3,500; an equity of redemption; a family homestead after death while minor children remain; and Michigan Education Trust, MESP, and 529 or 530 accounts.

1. The dollar limits are outdated, so TBE titling, retirement accounts, and entities do the real work; MCL 600.5451 provides a separate, larger, inflation-adjusted bankruptcy exemption list.

F. What the accountant can do without an attorney.

1. Use 1099-Rs and custodial statements to separate owner-created IRAs from inherited IRAs; flag large inherited IRAs; keep rollover records; watch nondeductible or excess IRA contributions; caution against withdrawing from a 401(k) when a claim looms; and review beneficiary designations.

G. The attorney handles inherited-account beneficiary trusts and other individualized retirement planning.

1. A properly drafted beneficiary trust may be appropriate where children face creditor or divorce risk; refer those individualized retirement-planning issues to counsel.

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VII. REVIEWING BUSINESS BALANCE SHEETS FOR VULNERABILITIES

A. Soft spots creditors look for.

1. Excess cash sitting in the operating company.

2. Owner loans, shareholder loan accounts, and intercompany receivables with poor documentation or no repayment terms.

3. Real estate and equipment held inside the operating entity.

4. Undercapitalization, which is also a veil-piercing factor.

5. Commingled accounts, where personal expenses run through the business.

6. Personal guarantees disclosed in the notes to the financial statements.

7. Payroll tax exposure: the trust fund recovery penalty (26 U.S.C. § 6672) makes responsible persons personally liable for unpaid employment taxes.

B. Recommendations the accountant can make.

1. Sweep excess cash out through properly authorized and recorded distributions.

2. Move real estate or intellectual property into a separate holding entity with an arm's-length lease or license.

3. Document intercompany loans with written notes, a stated interest rate, and a repayment schedule.

4. Book every owner/business transfer as a distribution, a loan, or compensation.

C. Fraudulent transfer caution.

1. Transfers must be for reasonably equivalent value and made while solvent. Michigan Uniform Voidable Transactions Act, MCL 566.31 et seq. (MCL 566.34, 566.35).

2. Courts weigh 'badges of fraud,' such as transfers to insiders, lack of fair value, and insolvency soon after. Dillard v. Schlussel, 308 Mich. App. 429 (2014).

3. Restructure when the balance sheet is strong, not when a claim is pending.

4. Accountants and attorneys can be held liable for assisting in improper transfers that are fraudulent. However, interestingly, a creditor does not have a cause of action against a person involved in the counseling, drafting, preparation, execution or funding of a Michigan domestic asset protection trust (described below) MCL 700.1045(7).

D. The attorney drafts entity formation documents, operating agreements, and leases.

VIII. DIVORCE PLANNING

A. Michigan property division basics.

1. The court divides property that came to either party "by reason of the marriage." MCL 552.19.

2. Each spouse generally keeps separate property. Reeves v. Reeves, 226 Mich. App. 490 (1997).

3. Exceptions: the court may reach separate property based on need, MCL 552.23(1), or on the other spouse's contribution, MCL 552.401.

4. Commingling can convert separate property into marital property. Cunningham v. Cunningham, 289 Mich. App. 195 (2010).

B. Prenuptial and postnuptial agreements.

1. A prenup cannot strip the court of its equitable power under MCL 552.23(1) and 552.401, but prenuptial agreements are enforceable in Michigan. Allard v. Allard, 318 Mich. App. 583 (2017).

2. Postnuptial agreements are not invalid per se. Skaates v. Kayser, 333 Mich. App. 61 (2020), confirms that postnuptial agreements are enforceable in Michigan, but the same Allard principle applies.

3. Senate Bill 160 of 2025 (Uniform Premarital and Marital Agreements Act) passed the Senate in May 2025 and remains in the House Judiciary Committee. It is not yet law as of the date of this outline.

4. The asset protection trust statute has its own divorce rule.

C. What the accountant can do without an attorney.

1. Trace and document inherited and premarital funds.

2. Keep separate accounts separate and discourage depositing an inheritance into a joint account.

3. Document a business's value as of the date of marriage.

4. Treat an upcoming marriage or remarriage as the time to suggest a prenup.

D. The attorney drafts the prenup or postnup, and each spouse needs independent counsel.

IX. CORPORATIONS AND LLCS

A. The liability shield.

1. Members of a limited liability company are generally not liable for the LLC's debts. Michigan Limited Liability Company Act, MCL 450.4101 et seq.; MCL 450.4501.

2. Limited partners in a limited partnership are not liable for the debts of the limited partnership. MCL 449.1303.

3. Stockholders of a corporation (whether a C corporation or S corporation) are not liable for the debts of the corporation. MCL 450.1317(4).

4. 'Inside' liability (business creditors reaching the owner) is blocked by the entity shield.

5. 'Outside' liability (the owner's creditors reaching the business): the charging order is a judgment creditor's exclusive remedy against a member's interest in a limited liability company. MCL 450.4507(6).

B. Veil piercing – allows creditor to hold owners of entity liable for debts of the entity.

1. Three-part test: (1) the entity was a mere instrumentality of the owner; (2) it was used to commit a fraud or wrong; and (3) the claimant suffered an unjust loss. Strict fraud is not required. Green v. Ziegelman, 310 Mich. App. 436 (2015).

2. Veil piercing is a remedy that may be pursued even after a judgment against the entity. Gallagher v. Persha, 315 Mich. App. 647 (2016).

3. Owning 100% of the stock, without findings of fraud or wrongdoing, does not justify disregarding a corporation. Nairne v. Dep't of Env't, Great Lakes & Energy, No. 367091 (Mich. Ct. App. Jan. 26, 2026).

C. Annual accountant "entity hygiene" checklist.

1. The entity has its own bank account, and personal expenses are not paid from it (or are booked as distributions or loans).

2. The entity is adequately capitalized and insured.

3. Contracts are signed in the entity's name.

4. Annual statements are filed with LARA, and the entity is in good standing.

5. A written operating agreement for an LLC is in place.

6. Distributions and loans are documented.

7. Has the entity lapsed for failure to file Michigan Annual Reports?

8. Separate risk activities are held in separate entities.

9. Have annual minutes of the corporation been prepared and approved.

D. The attorney handles formation, operating agreements, and multi-entity structures.

X. IRREVOCABLE TRUSTS

A. Third-party spendthrift trusts.

1. A spendthrift provision generally keeps a beneficiary's creditors from reaching trust assets. Michigan Trust Code, MCL 700.7101 et seq.; MCL 700.7502.

2. Exceptions exist, such as child support. MCL 700.7504.

3. This is the standard tool for protecting gifts and inheritances to children and grandchildren.

4. Debts of trust need to be paid by the trust, not by the grantor or beneficiaries.

B. Michigan domestic asset protection trusts.

1. Governed by the Qualified Dispositions in Trust Act, MCL 700.1041-700.1050 (2016 PA 330, effective March 8, 2017), which is separate from the Trust Code.

2. Assets transferred in accordance with the Act are not subject to creditor claims against the grantor of the Trust, even if the grantor can receive funds from the Trust.

3. Key requirements:

   a. The trust must be irrevocable, governed by Michigan law, and include a spendthrift clause.

   b. At least one Michigan "qualified trustee" must serve, and it cannot be the client.

   c. The client may keep limited powers, such as directing investments, vetoing distributions, and receiving discretionary distributions.

   d. Before funding, the client signs a qualified affidavit covering solvency, no intent to defraud, no known threatened suits, no child support arrears over 30 days, and no contemplated bankruptcy.

4. Protection features:

   a. Creditors may attack the trust only under the UVTA's actual-fraud and constructive-fraud provisions. Creditors must generally sue within two years of the transfer and must prove their case by clear and convincing evidence. For pre-existing claims, the limitations period is the later of two years after the transfer or one year after discovery if the claim was fraudulently concealed.

b. TBE property transferred by both spouses keeps its TBE treatment while both are living. MCL 700.1047(6).

c. Divorce: if the trust was funded more than 30 days before the marriage (or the spouses agree), the trust interest is not marital property.

d. Creditors have no claim against those who counsel on, prepare, or fund the trust. MCL 700.1045(7).

C. The accountant's role.

1. Identify candidates: high-liability professionals, business owners with personal guarantees, and clients facing a liquidity event.

2. Prepare the solvency analysis and balance sheet that support the affidavit.

3. Handle grantor trust income tax reporting and any Form 709 gift tax return.

4. Help time the funding well before any trouble arises.

D. The attorney drafts the trust.

XI. ACTION CHECKLIST FOR THE ACCOUNTANT

A. Engagement and intake.

1. Add a one-page asset protection intake to the engagement letter or organizer, covering titling, insurance, entities, and life events such as marriage, divorce, a new business, a liquidity event, or a teenage driver.

2. Request insurance declarations pages with every organizer.

B. Annual review.

1. Compare all insurance coverage against the benchmarks and flag gaps in writing.

2. Check titling on 1099s, brokerage statements, and deeds.

3. Review retirement accounts: separate owner IRAs from inherited IRAs, keep rollover records, and flag inherited accounts for beneficiary trust planning.

4. Review business balance sheets for excess cash, undocumented loans, commingling, real estate in the operating entity, and guarantees.

5. Run the annual entity hygiene checklist.

C. Life events and referrals.

1. Document inherited and premarital assets separately.

2. Probate avoidance is fine, but make sure that asset protection for assets has not been reduced.

3. Flag marriages, remarriages, liquidity events, new businesses, or a teenage driver as planning opportunities.

4. Refer asset protection trust candidates while the balance sheet is strong.

5. Remember: the best time to plan is before the claim arises. The second-best time is today!!