



Estate & Business Planning Strategies for Farmers

A Self-Defense Primer

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- ❖ LL.M. – Masters in Law (Taxation), Southern Methodist University
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Estate & Business Planning Strategies for Farmers



“This presentation does not constitute legal, accounting or other professional advice. Only through a personal, confidential consultation with qualified legal counsel can you properly evaluate your own unique estate planning challenges and determine what, if any, appropriate legal strategies and tactics should be implemented to meet those challenges.”



On the Internet!

- ❖ For the latest estate planning information, surf on over to www.bvtlaw.com
- ❖ Read a selection from www.wealthcounsel.com
- ❖ Find out many planning Techniques
www.naela.org
- ❖ Take our Estate Planning IQ Quiz
and more





Estate & Business Planning Strategies for Farmers

***Thank You for Coming
and
Congratulations !***



Asset Protection for Farmers

- Summary
 - Traditional farming has changed
 - Women-owned farms have increased drastically in the last decade
 - *WARNING!* Risks to your assets have increased
 - ...But defenses are available
 - The Bottom Line—EQUIP YOURSELF NOW!



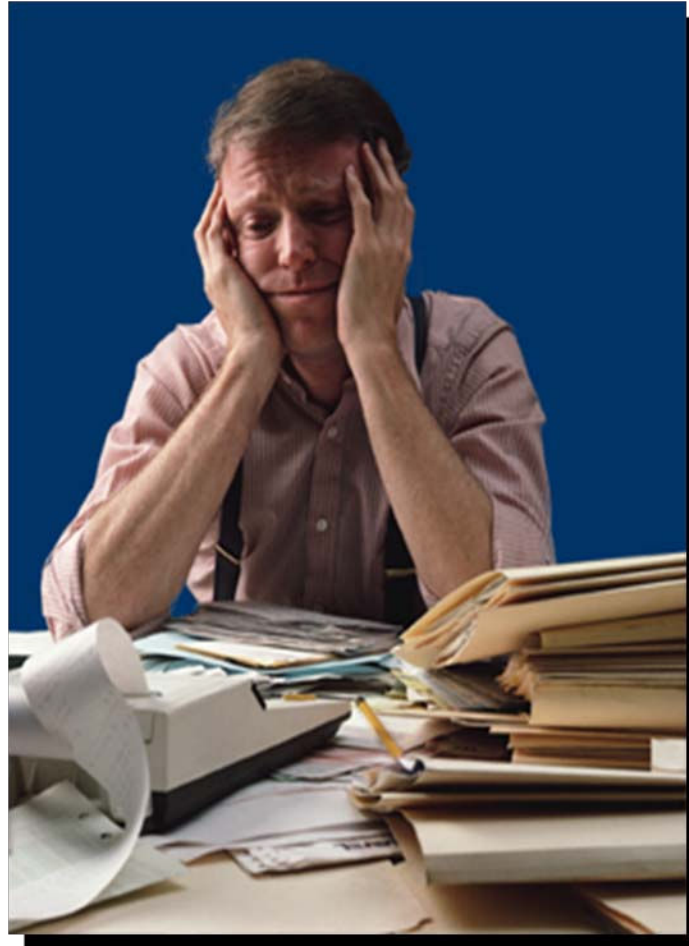
Estate & Business Planning for Farmers

Aim for our Workshop:

“To put you on the road to building a *Strategic Plan* to protect and preserve your assets for you now and into the future, as well as design your estate plan for your beneficiaries.”



Lack of Knowledge





Procrastination





Our Workshop Agenda

- Define Estate & Business Planning with an Emphasis on Asset Protection.
- Your Risks--How You Lose!
- Your Defenses--What Can You Do?
- A Strategic Plan of Action!
- Questions & Answers





Purpose For Planning





Asset Protection Planning

- Building a *Strategic Plan* to...
 - Protect Your Family From Taxes, Lawsuits, Disability, and Probate
 - Gain Safety & Security
 - Have Peace of Mind





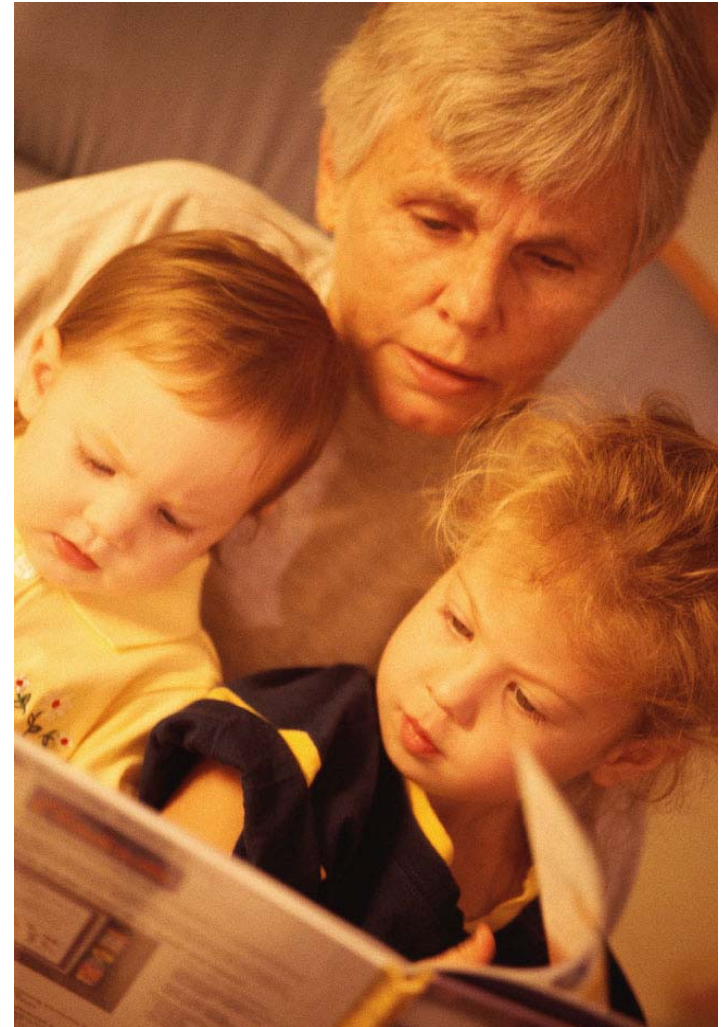
Definition of Asset Protection

- Control My Property for My Benefit
- Give What I Want, To Whom I Want
- Give It How, When, and the Way I Want
- Save Every Possible Dollar from Taxes, Probate, Attorney Fees, Court Costs, and Creditor Claims
- IN SUMMARY: *To Manage My Risks!*



What Asset Protection is *Not*

- Not a Plan to...
 - Hide Assets
 - Commit Fraud or Perjury or Tax Evasion
 - Engage in Fraudulent Transfers





Reasons to Protect Assets

- “Sue Society:” Who Can I Blame?
- Courts are out of Control
- Juries Play “Robin Hood”; Take from the Rich, Give to the Poor
- High Rate of Divorce
- *Pay Fewer Taxes!*
- Cut Your Losses (Damage Control)
- Peace of Mind
- Concentrate on Your Job
- Protect Your Family and Your Business
- Leave a Legacy



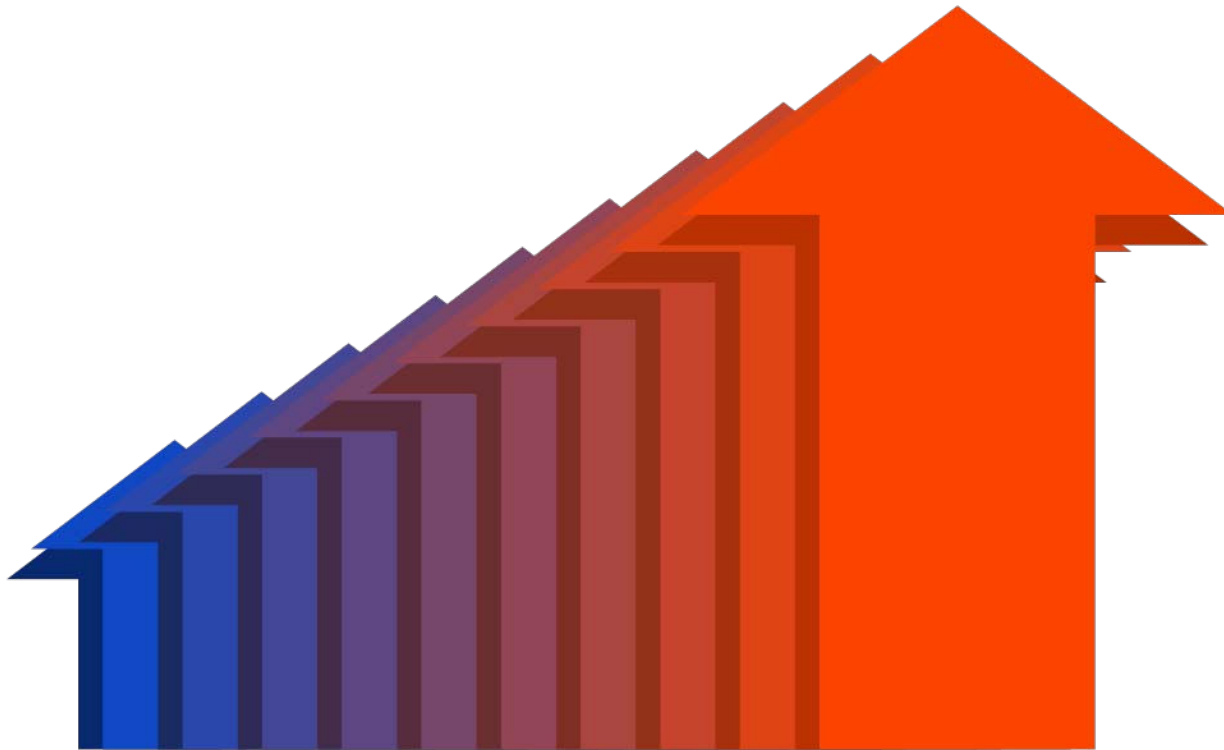
Greater Exposure to Risks for...

- Farmers—whether or not you own your own Farm
- Professionals Subject to Malpractice Exposure
- Directors & Officers of Publicly Held Companies
- Landlords or any Owners of Real Estate



More Lawsuits Are Filed Each Year*

* Costs of tort system jumped from \$205 Billion in 2001 to \$233 Billion in 2002, the largest dollar increase in U.S. history!





Four Areas of Risk

- Creditor Claims
- Income & Estate Taxes
- Disability/Long-Term Care
- Living Probate (Guardianship)/Death Probate





First Risk

- Creditor Claims (Future Potential)



Types of Claims

- Employee Suits
- Business or Professional Liability
- Divorce
- Tax Liability (IRS/State)
- Creditor Lawsuits
- Liability for Other People & Personal Liability
- Partnership Liability
- Unknown Claims (Product /Environmental Liability)
- Officer/Director Liability (Serving on Bd. Corp.)



Results of Creditor Claims

- Stress!
- Loss of Privacy
- Delays & Hassle
- Attorneys Fees
- Accounting Fees
- Court Costs
- And Potential for Loss Itself--50/50 with Jury



Attempts to Avoid Creditor Claims

- Gimmicks or Methods That Don't Work
 - Fraudulent Transfers
 - “Hiding” Assets
 - Joint Ownership
 - “Constitutional” Trusts



Creditor Rights

- Can Set Aside Fraudulent Transfers
- Marital Property may be Exposed to Creditor of Either Spouse
- Separate Property is Exposed to Separate Creditors



Creditor Rights (cont'd.)

- Divorce Court May Have Jurisdiction Over Both Marital and Separate Property
- All Joint Tenancy Property is at Risk of Any Single Joint Tenant's Creditors!



Fraudulent Transfers

- Intent to Defraud, Hinder or Delay Known or Likely Creditors
- Intent is Generally Presumed
- Badges of Fraud
 - Transfer of Non-Exempt Assets
 - Less than Full & Fair Consideration
 - Few Assets Remain to Satisfy Claim
- Court Can Set Aside!



Second Risk

- Taxes





Income Taxes

- Effective Rates are High and Climbing Higher
- Self-employment Tax
- Fewer Deductions
 - No “Fun” Write-Offs
- Hard to Pass Income to Other Family Members
 - No Clifford Trusts



Death Taxes

- State Inheritance Tax
- Federal Estate Tax



Inheritance Tax

- Is there a State “Death” Tax
- Arkansas has “Pick-Up” Tax



Federal Estate Tax

- Per Person Gifts Tax Free: \$5,000,000 combined Lifetime & at Death Exemption & \$13,000 annual exclusion per donee
 - Includes ALL Your Assets
 - Includes Farm, Pensions, Retirement, Insurance
- Unlimited Marital Deduction
 - Only Delays the Tax
- Couples Fail to Plan: lose one tax exemption
- Tax Rates are a flat 35% in 2012 and go to 55% next year unless Congress acts



Federal Estate Tax (Cont'd.)

- Due IN CASH 9 Months From the Date of Death
 - Trust Planning Preserves Two Exemptions
 - Special Requirements for Non-Citizens
- 90% of Family Farms (Businesses) Die with the Founder
- Each Generation Gets Taxed AGAIN!



Third Risk

- Disability/Long-Term Care



Disability/Long-Term Care

- 50% of All Persons Over 65 Will Live in a Nursing Home Facility at Some Point
- Cost of Nursing Home Care is \$65,000 per Year Across the Nation
- Average Cost of Nursing Home Care in NW Arkansas is \$5,000-\$6,000 Per Month
- Long Term Care Paid By Medicare 12%; Medicaid 47%; Personal Assets 41% (including L-T Care Ins.)



Fourth Risk

- Living Probate (Guardianship) and Death Probate



Definition of Living Probate

- Court Proceeding to Protect an Allegedly Incapacitated Person: Guardianship
 - Public Proceeding
 - Humiliating
 - Inter-Family Strife and Dissension
 - Costly: Attorneys' and Experts' Fees
 - Time Consuming



Durable Powers of Attorney

- Inexpensive
- BUT Generally Give Absolute Power
 - Blank Checkbook for ALL Property
 - Few Instructions, If Any
 - Financial Institutions May Refuse
 - Title Companies May Refuse
- Easy to Abuse
- Usually Not Include Health Care/Gifting



Death Probate

- Where There is a WILL There is PROBATE!
 - Court Proceeding Where Your Will Does Its Job
 - May Cost 3-6% of Gross Estate or More!
 - May Take 9 to More Than 24 Months
- A Lawsuit Against Yourself, Using Your Money, for Benefit of Your Creditors!
- Public Forum; Challenges Common & Easy



Death Probate (cont'd.)

- Attorney Fees
 - Statutory Fees -Arkansas
 - Reasonable Fees
- Ancillary Probate
 - Probate in more than One State
- Creditor Claims
 - Known & Unknown



Four Risks to Your Financial Security

- Summary
 - Creditor Claims
 - Income & Estate Taxes
 - Disability/Long-Term Care
 - Living Probate /Death Probate





Asset Protection That Works

- Methods That Work (Reduce Risks)
 - Save Administrative Fees and Costs
 - Reduce Taxes
 - Provide Multiple Layers of Defense
 - Allow Opportunity for Early Settlement



Your Defense: Build a Strategic Plan

- Build Foundation with...
 - Exempt Assets
 - State/Federal Law; Retirement Plans; Annuities & Insurance
 - Properly Structured Ownership
 - A Business Transition Plan



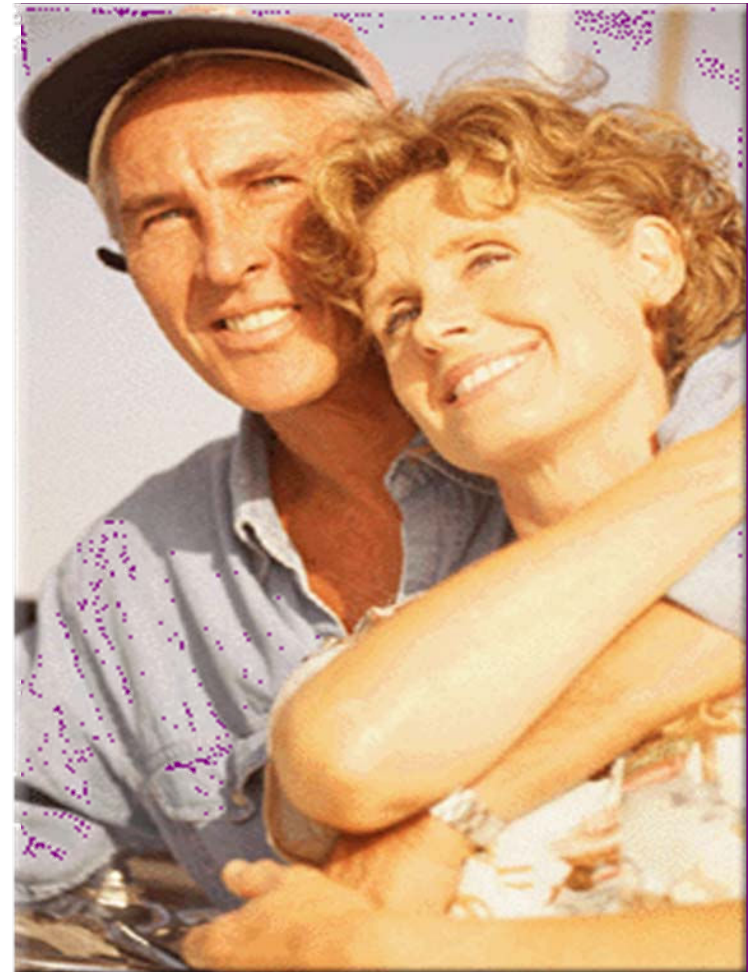
Your Defense: Build a Strategic Plan (Cont'd.)

- Fortify Your Structure of Ownership with
 - Property Agreement with Spouse
 - Trusts
 - Long-Term Care Plan in Mind
 - Corporations
 - Family Limited Partnerships (FLP)
 - Limited Liability Companies (LLC)
 - More Advanced Planning
 - Offshore Planning
 - Legacy Planning



First Line of Defense

- Insurance





Strengths and Weaknesses

Strengths

- Covers Loss
- Cash to Settle
- Duty to Defend
- Fund Buy-Sells
 - Disability
 - Death
- Pay Toward Long-Term Care Expenses
- Pay Estate Taxes With Discounted \$\$

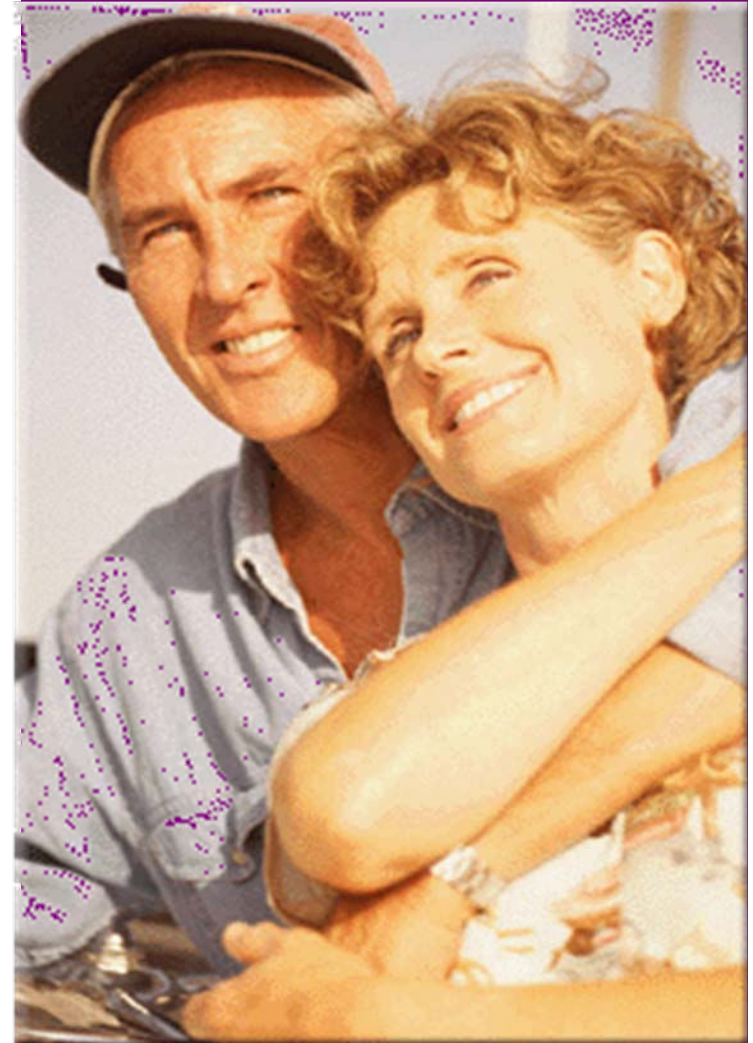
Weaknesses

- Getting Costly
- May not Qualify
- Insolvency of Carrier
- May get Cancelled
- Coverage Exemptions
 - Hazardous Waste
 - Intentional Acts
 - Punitive Damages
- May be Insufficient



Second Line of Defense

- Exempt Property





Strengths and Weaknesses

Strengths

- Some Home Equity
 - Arkansas one-fourth acre urban & 80 acres rural
- Retirement and Pension Plans
- Some Personal Effects and Property
- Life Insurance and Annuities

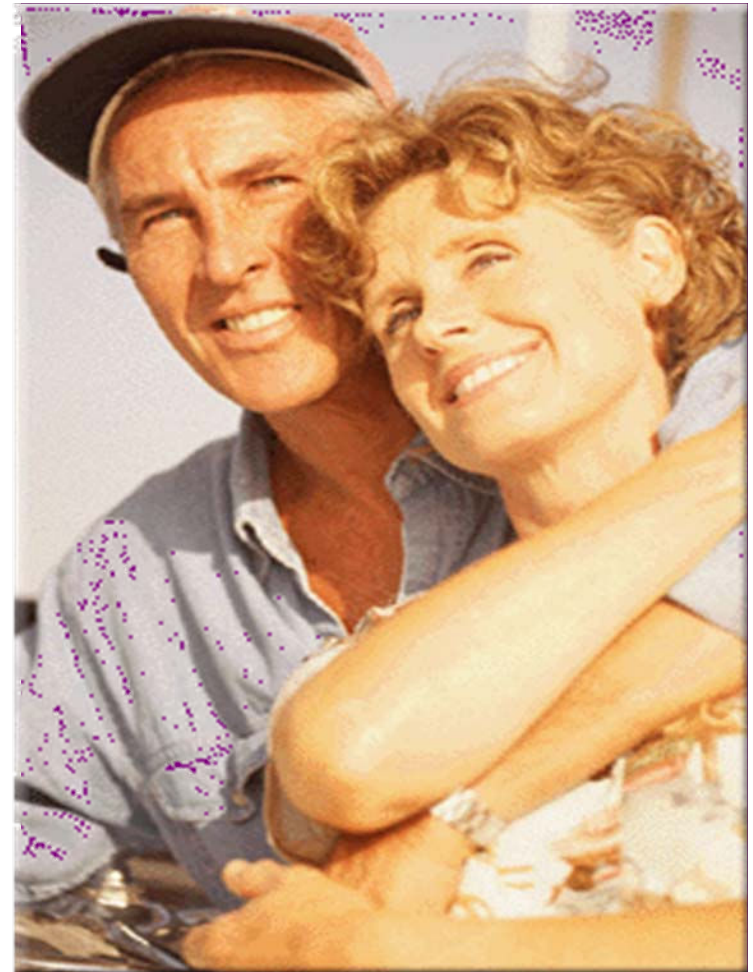
Weaknesses

- Depends on State
- May not Protect Much
- Most Assets and Investments are not Exempt
- May not Remain Exempt



Third Line of Defense

- Structured Ownership





Title to Assets

- The Way You Hold Title to Your Property Affects the Rights a Creditor Will Have!
- You Cannot Take from Someone What Is Not in Her Name.
- So--Title to Your Assets is Directly Related to Your Risks



Marital Property

- Marital Property
 - Acquired During Marriage
 - Created by Law or by Agreement
 - Result of an “Onerous Acquisition” or WORK!



Separate Property

- Separate Property
 - Acquired Before Marriage
 - Acquired By Gift or Inheritance
 - Can Convert to Marital By Agreement or Mistake
 - Personal Injury Recovery



Joint Tenancy

- 100% Co-ownership by More Than One Person— including Tenancy by the Entirety for Husband and Wife
- “Last One Left Standing Rule:” Survivor Owns It All!



The Rule Is: Divided You Stand, United You Fall!

- If you own everything in one trust, one company, or in your or your spouse's own names jointly, you can lose everything in one lawsuit.
- If you own assets in separate entities, only one is threatened by one lawsuit.
- If you are personally sued, multiple entities can keep creditors from controlling your assets for their benefit.



Structured Ownership



- First Fortification
 - Spousal Property Agreements
 - Dividing Property--Divided we Stand, United We Fall!
 - Works Where One Spouse has Significant Liability Exposure
 - Use with Additional Techniques
 - Use for Estate Tax Planning
 - Divide or Transfer Assets for Long-Term Care Planning

CAUTION: MARITAL DISSOLUTION !



Structured Ownership



- First Fortification (Cont'd.)
 - Spousal Property Agreements
 - EXAMPLE
 - “At-Risk” Spouse Owns:
 - » Exempt Assets
 - » Risky Asset
 - “Safe” Spouse Owns:
 - » Non-Exempt Assets
 - » Family Home
 - OR: Divide 50:50 when both At Risk, Spreads the Risks



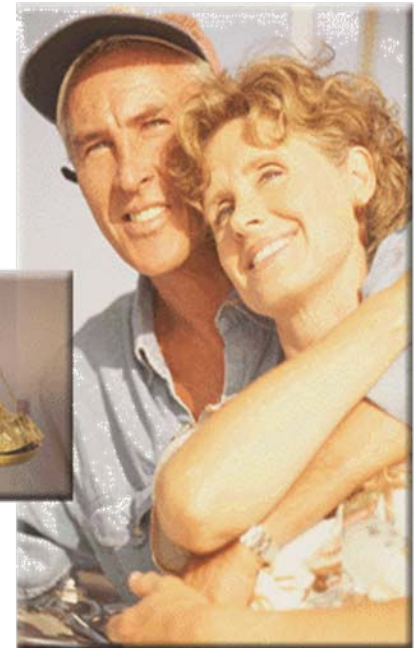
Long-Term Care Planning

- Transfer Assets to Community Spouse
- Community Spouse (CS) Prepares New Will to Exclude Institutionalized Spouse (IS) or Creates Testamentary Trust for IS for Discretionary Distributions Only, in Event CS Dies First .
- Remove Institutionalized Spouse as Beneficiary on Accounts



Structured Ownership

- Second Fortification
 - Revocable Living Trust





Revocable Living Trust Features

- Avoids Living and Death Probates
 - Immediate Transfer of Legal Authority to a Fiduciary (can be self)
 - Detailed “Rulebook” of Your Wishes
 - Organized, Private
 - Reduces Administrative Fees, Costs and Delays
 - Controls Distribution to Beneficiaries
 - Can/Should Include Estate Tax Planning



Asset Protection Features

- No Court Involvement on Death
 - Private
 - No Forum Provided for Creditor
 - Can “Cut Off” Creditors
- If Property is Partitioned:
 - Two Separate Property Trusts; Each Spouse Shares Management



Asset Protection Features (Cont'd.)

- Can Provide “Spendthrift” Protection
 - Grantor not Protected
 - Creditors of Other Beneficiaries Cannot Look to Trust for Payment
 - Beneficiary Cannot be Forced to Pledge or Assign Trust Assets
 - Can Keep Assets in Trust to Protect Adult Children from Divorce, Lawsuits, Poor Judgment



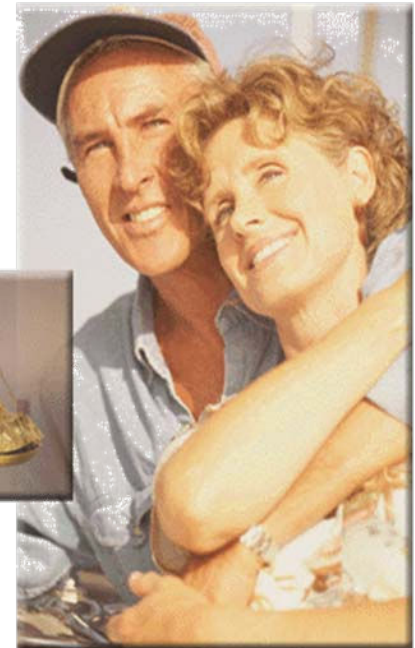
Asset Protection Features (Cont'd.)

- *Caution!!!*
 - Often Clients Think Revocable Trust Has Addressed Long-Term Care Planning, BUT...
 - IN FACT--No Assistance for Long-Term Care Planning with Use of Medicaid (except for State Recovery aspect)
 - TAKE NOTE: If a Revocable Trust Owns the Residence, then it is a Countable Resource for Medicaid Purposes



Structured Ownership

- Third Fortification
 - Irrevocable Trust





Irrevocable Trust Features

- Grantor is Usually not the Trustee
- Usually Not Part of Grantor's Taxable Estate
- May Own Life Insurance (ILIT)
 - Income and Federal Estate Tax-Free
When Received
- Spendthrift Protection
- Controlled Distribution to Beneficiaries
- Can use with Long-Term Care Planning, but a 60 month
Look-back Period



Special Irrevocable Trusts

- Charitable Trusts
 - Grantor Controls, Makes Bequest
 - Income Tax Deduction; Avoid Capital Gains Tax on Appreciated Property
 - Increase Retirement Income
- Special Needs Trusts
 - Third-Party (Qualified Disability Trust gets Personal Exemption-2009-\$3650)--Retains Government Benefits
 - Self-Settled -Beneficiary's Funds-Retains Government Benefits



Structured Ownership



- Fourth Fortification
 - Corporations (S or C Corp)
 - Family Limited Partnerships (FLP)
 - Limited Liability Companies (LLC)



Corporations Protect You from Lawsuits Against the Farm

- If someone sues your farming operation, you are generally not personally liable as an officer, an employee, or shareholder.
- If someone sues you, they can seize your corporate shares just as if they were shares of Wal-Mart.
- Unlike your interest in Wal-Mart, when they get your business' shares, they get control.



Cutting-Edge Protection

- Limited Partnerships (LP) and Limited Liability Companies (LLC) provide greater protection from creditors than corporations.
- Instead of getting shares (and control), a creditor only gets a “charging order.”



Charging Orders Stink

- A charging order is the right to receive dividends without any right to control the company.
- The plaintiff is liable for taxes on “phantom income” when profit is earned but retained in the company.
- The plaintiff’s attorney doesn’t collect his contingency fee since no money has been received.



Structured Ownership

- **Fifth Fortification**

- More Advanced Planning

- Asset Protection Trusts (APT)
- Equity Stripping
- Offshore Trusts
- Dynasty Trusts
- “Friendly” Liens
- Personal Residence Trusts
- Retirement Plan Beneficiary Trust
- Gifting for Long-Term Care Plan w/60 Month Look-Back
- Reverse Mortgages



Advanced Planning Concept



- Set Up a Trust that Limits or Eliminates Creditor Rights to Seize Assets (using other jurisdictions)
- Integrated With Your Estate Plan
 - You can be a Beneficiary
 - You can Remove Assets from Your Estate
 - You can Sleep More Soundly



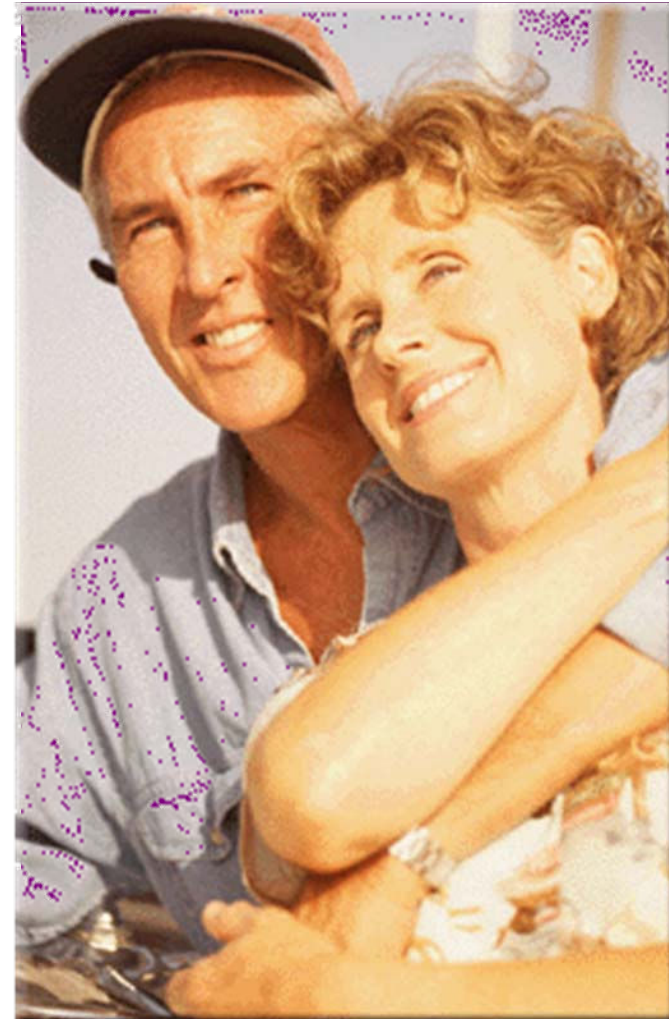
Asset Protection Trusts: Domestic or Offshore Planning

- Choose Your Jurisdiction (Approx. 11 States or Offshore)
 - Generally Unfriendly to Creditors
 - Offshore has Similar Legal Concepts
 - English Language
- Tax Neutral for U.S. Tax Purposes
- States are Convenient and Familiar
- Offshore is Disclosable, but not Answerable to U.S. Courts



Your Defense Against Risk: Build a Strategic Plan

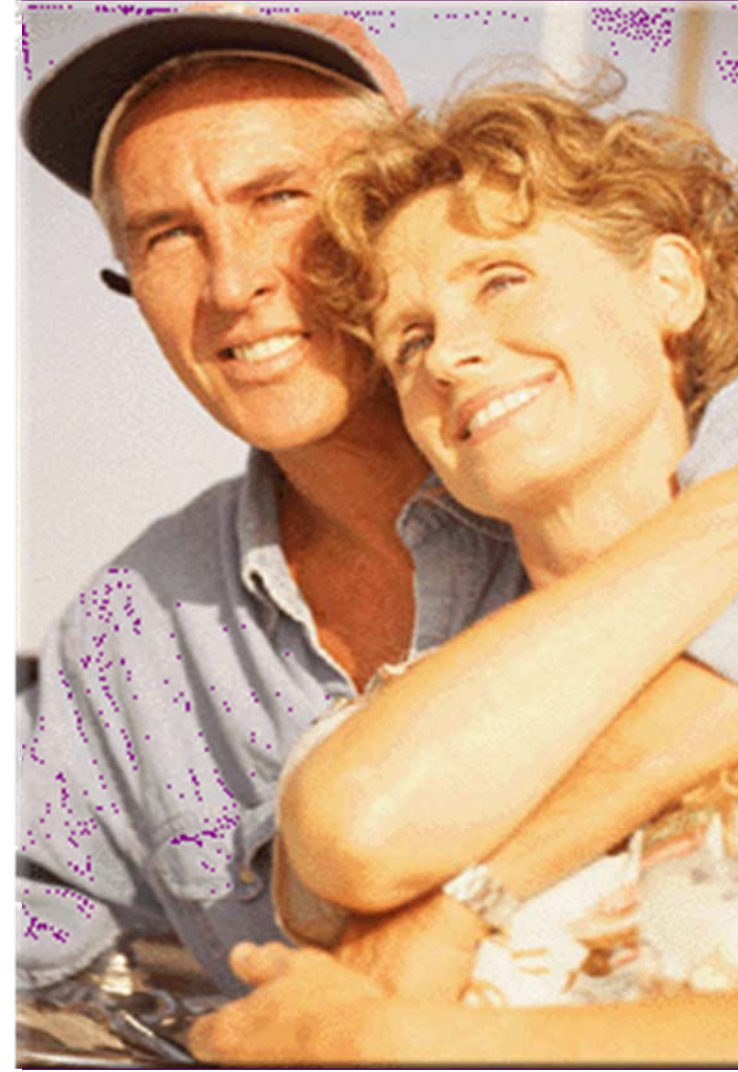
- First Three Lines of Defense
 - Insurance
 - Exempt Assets
 - Structured Ownership





Fourth Line of Defense

- Farming or Business Transition Planning
 - Passing the farm to the next generation





Farm-Business Transition Issues

- Most Farming Operations Die with the Founder
- Reasons Include:
 - Lack of Liquidity to Pay Estate Taxes
 - Lack of Ability to Manage Farm
 - Infighting: Family Strife and Dissension
- Do Your Family Members Really Want to Farm Together?



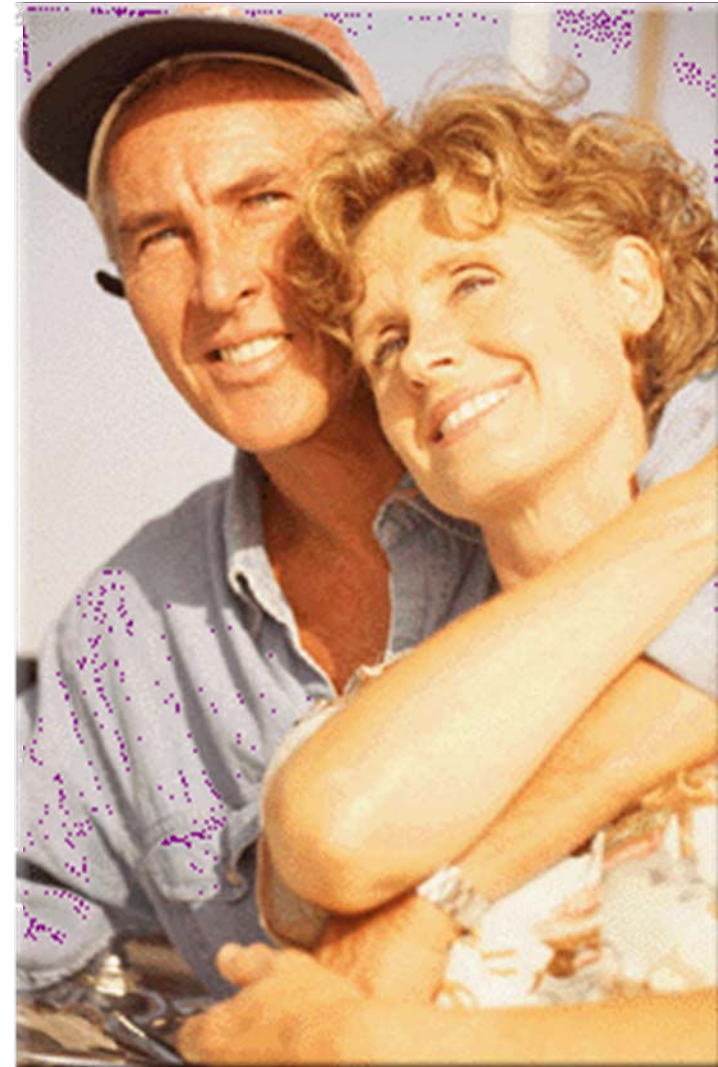
The Successful Transition Includes

- Interested Family Member(s) Continue Farming Operation
- Off-setting Benefits to Other Family Members with
 - Insurance
 - Buy-Out Agreement
- Considers:
 - Key Employee Involvement
 - Tax Advantaged Sale
 - Estate Tax Reduction
 - Increased Retirement Income to Older Generation
 - Income Tax Savings



Your Defense Against Risk: Build a Strategic Plan

- Strong Foundation
 - Insurance
 - Exempt Assets
 - Structured Ownership
 - Farming/Business Transition Plan





**Like pieces of a puzzle,
each element of your
Strategy must fit into the
whole.**

Asset Protection

Business Strategy

Tax Mitigation

Estate Planning

Long-Term Care Planning



Action: **Start Building your Strategic Plan Now to Protect Your Assets!**

- Purchase Available Insurance
- Fund Your Exempt Assets
- Structure the Ownership of Your Assets
 - Business: Use Cutting-Edge Solutions
 - Personal: Divide with Spouse--w/Agreement; Implement Estate Plan; Consider Multiple Value of Trusts
- Provide for Farm/Business Succession
- *Caution:* Pitfalls



Keys to a Successful Plan:

- Team Approach with Good Advisors
- Custom Design for You and Your Goals
- Use of Cutting Edge





Number One Pitfall: *Procrastination*





Questions and Answers!



Thank You for Attending!