

LAW OFFICES  
**BRUCE GIVNER**  
A PROFESSIONAL CORPORATION

BRUCE GIVNER  
(bruce@givner.com)  
KARL H. KNICKMEYER  
(karl@givner.com)  
KATHLEEN GRAHAM GIVNER  
(kathy@givner.com)  
OWEN D. KAYE  
(owen@givner.com)

SUITE 445  
12100 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90025  
TELEPHONE (310) 207-8008  
FACSIMILE 310-207-8708  
Web Site In Progress: www.givner.com

ENCINO OFFICE  
SUITE 1520  
15760 VENTURA BOULEVARD  
ENCINO, CALIFORNIA 91436  
TELEPHONE (818) 785-7579  
FACSIMILE (818) 785-3027

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## Asset Protection Planning Techniques

**Actual Case.** On July 12 we received a call from a cardiac surgeon, referred by a restaurant client. The doctor wanted our help to protect his assets: \$2,000,000 in a corporate profit sharing plan; \$500,000 in home equity; and \$2,000,000 of other liquid assets.

**Vanilla Planning.** We were prepared to assist him in the following ways: (i) confirm the retirement assets were exempt; (ii) establish a house GRIT (QPRT); and (iii) prepare a family limited partnership (FLP) with a corporate GP wholly owned by a trust for his kids.

**Timing.** This doctor (like almost everyone else) waited **too long**. A jury had just awarded a **verdict** of \$250,000 actual and \$450,000 punitive damages. We could not help him as to the judgment, even though he thought it was wrong and would be reversed on appeal. Were we to help him we would risk (i) being viewed as parties to a fraudulent transfer; and (ii) losing our licenses. (We can only help him protect his other assets, e.g., those above the amount needed to pay the judgment.)

**Domestic vs. Foreign Structures.** We prefer to establish domestic structures, e.g., the FLP with the corporate GP diagrammed on the other side of this page. These structures are typically sophisticated estate planning techniques, sometimes with a slight twist, e.g., the use of a protector in an irrevocable heirs' trust. Despite our general preference, we will, in selected situations, help clients form foreign structures, typically a foreign finance company (diagram available on request).

**Judicial Hostility To Foreign Structures.** Dramatic support for our prejudice in favor of domestic planning occurred at the April 15, 2000, LA Bankruptcy Forum. The first speaker, Barry Engel, Esq., principal author of the Cook Islands' creditor protection laws, addressed the propriety of "asset protection planning." A Bankruptcy Judge, the next speaker, said: "Asset protection planning? Putting a nice name on something does not make it nice. Take *ethnic cleansing*, for example." That fairly represents most judges' attitude. It is best to use structures which have significant non-creditor purposes, e.g., typical estate tax techniques. The judge also said: "**Use of a foreign structure is prima facie evidence of [an intent to] hinder [a creditor], in other words, a fraudulent transfer.**"

**Estate Tax Repeal/Phase-Out?** The typical estate tax structures we use in asset protection planning will be appropriate even if the estate tax is repealed. Why? The same techniques will be used to limit the heirs' future capital gains. We described the FLP with corporate GP structure to the Bankruptcy Judge, who said "if it's legal under California law, it's OK in terms of creditor planning."

**Conclusion.** The CPA is the **appropriate professional to initiate the discussions** about and guide the clients to asset protection planning. This advice is just another aspect of helping the client preserve the estate, which the CPA already does through (i) income, capital gains and estate tax planning; and (ii) financial planning, e.g., the sale of life insurance and management of securities.

**Income Tax Planning Update.** There are excellent (relatively new and **unpublicized**) techniques for clients with "excess" income. These techniques work (i) even if the clients have many employees and (ii) for clients who wish to use their retirement funds. There will be **no** mailers describing these techniques.