Asset Protection Newsletter

The first one gets the oyster, the second gets the shell.

– Andrew Carnegie

Welcome to Our December 2013 Asset Protection Newsletter!

How can we protect our assets if we live in a community property state?

There are nine community property states. Community property includes all marital assets. There are also separate assets; those acquired by either spouse through gift or inheritance, acquired before marriage, or specifically partitioned by the spouses into separate property. The community property laws don't protect marital assets from creditor claims against one spouse; however, separate property of the non-liable spouse is generally sheltered from claims against the other spouse if the debt didn't benefit both spouses. Generally, it is wisest to protect both community property and separate property through other means.

A married couple may partition and separately own assets in a community property state via a transmutation agreement. A transmutation agreement is a type of post-nuptial agreement wherein each spouse agrees to keep their own property separate and outside the community estate. A well-drafted transmutation agreement supersedes community property law. When drafting a transmutation agreement, each spouse should retain separate

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Asset Protection Webinar

December 17, 2013 @ 1pm

Estate Planning Webinar

December 18, 2013 @ 1pm

The Approximate Length for the Presentation is One Hour

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Important Changes in Florida Law

Latest update: In June of 2010, the

counsel and have full disclosure of the agreement's ramifications in order to prevent the agreement from later challenge. If one spouse is particularly vulnerable to creditor threats, a transmutation agreement allows the less vulnerable spouse to separately hold assets, which may provide some asset protection if it is done before the more vulnerable spouse has creditor problems. There are, however, some potential downsides to this solution.

The community property law of some states actually increases one's likelihood of losing marital assets to creditors. Some states allow a creditor to claim all community assets to cover the debts of either spouse. In contrast, a few states' community property laws actually provide limited protection. For example, Arizona allows a debt acquired by either spouse prior to marriage to be satisfied from community property, but only to the extent of the value of that spouse's contribution to the community that would have been such spouse's separate property if he or she were single. In contrast, an unsecured debt acquired during marriage may not be satisfied from community property. Nevada allows a spouse's separate debt to be satisfied from community property, but only if the wife acquires debt because the husband didn't provide for her necessities. Such a debt can then be satisfied from any community property, or from the husband's separate property. In Texas, only tort debts, not contract debts, may be satisfied from community property, but if the debt arises from a tort, then it may be satisfied from any and all community property. The same can be said for tort debts in Washington, except they may only be satisfied from the debtor's half of community property. On the other hand, California, Louisiana, Idaho, New Mexico, and Wisconsin allow a separate debt acquired by either spouse during marriage to be satisfied out of any community property.

As you can see, each state's community property laws have important differences in the construction or interpretation. If you live in a community property state, you should review with your attorney precisely how your state laws work. Focus on what specific rights creditors have to claim both community and separate property. We necessarily speak in generalities. Your community property state may follow somewhat different rules.

Should one seriously consider whether any co-ownership arrangement is right for them?

Positively. Those co-owning property seldom contemplate the potential liabilities they can incur from their co-ownership. Nor do they always consider whether their co-ownership aids or impedes the protection of the assets from their personal creditors.

Consider again the example of two business partners who title investment property in their personal names as tenants-in-

Florida Supreme Court held in Olmstead v. Federal Trade Commission (No. SC08-1009) that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company.

Be one step ahead, keep following our newsletter for up to date changes in the law!

Trending Asset Protection Public Relations

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common. If someone gets injured on the property, who has liability? How could these co-owners have more intelligently titled their property to reduce their personal exposure? What if one co-owner loses a lawsuit? What more could – and should – have been done to safeguard the debtor-partner's interest in the property?

Or consider an elderly mother with a middle-aged daughter. The mother wants to leave her savings account to her daughter when she dies and also wants her daughter to have access to the account in the event the mother becomes disabled. So she sets up a joint account and titles her bank account in both the names of herself and her daughter as joint owners. Mom, logically, reasons that when she dies the money will automatically pass to her daughter avoiding probate. It sounds so sensible. But does mom realize the potential pitfalls and liabilities of a joint bank account? What if the daughter is sued or has her own creditor problems or divorces? Poof! A healthy chunk of the savings accounts would then go elsewhere. You see, people don't think much about these things.

Married couples often see co-ownership as their simplest, most natural way to title their marital property, but they too, must ask themselves the same questions: Will co-owning their assets increase their respective liability? Will they get more or less lawsuit protection? And will co-ownership help or hinder their other estate planning objectives?

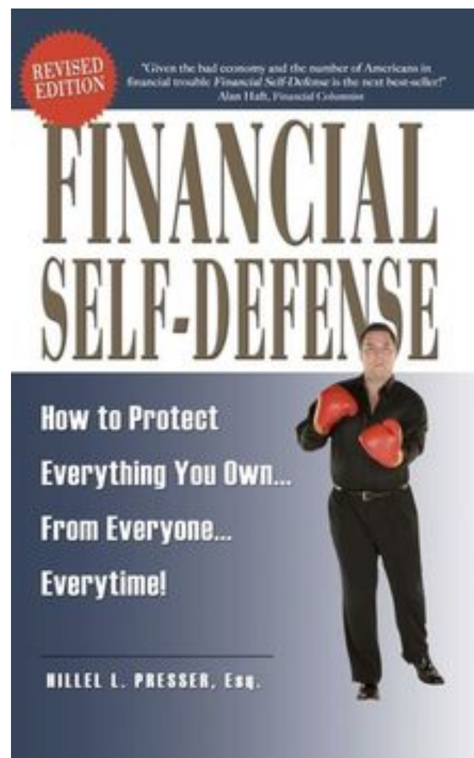
If I move from out of state into Florida, will I need new estate planning documents?

The short answer is "not necessarily." If your Will was done in the state you resided, then it can be admitted in Florida upon your death as a "foreign will." The process will be lengthier and potentially more costly because there are a few extra steps.

However, we recommend that you create new estate planning documents in Florida, once you have established it as your domicile, so that your beneficiaries can avoid the extra time and expense but also so that they can take advantage of some of the laws that are unique to Florida. The same is true of trusts and other estate planning documents.

Whether you move to Florida or to another state, it is important that you get your existing documents reviewed as soon as you move to make sure it will remain valid in your new state of residence.

The Presser Law Firm, P.A. - Asset Protection Attorneys



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Refer a Friend!

If you know anyone that would benefit from this newsletter, please have them contact us at **Info@AssetProtectionAttorneys.com**.

For every 60 minutes you spend making money, spend 60 seconds thinking about how to protect it!

The Presser Law Firm, P.A. represents individuals and businesses in connection with the establishment of comprehensive Asset Protection plans that incorporate both domestic and international components.

We help our clients protect themselves from lawyers, malpractice claims, creditors, foreclosure deficiencies, former or current spouses, children, relatives, and greedy lawsuit-obsessed citizens. While many people can make money, few know how to protect it.

In addition to Asset Protection, The Presser Law Firm, P.A. represents individuals in the areas of business formation, legal and business counsel, estate planning, and estate administration (wills and trusts).

We have been featured in numerous newspapers and magazines, among them Forbes, Sports Illustrated, The Robb Report, The Houston Chronicle, and The Los Angeles Times. We have also appeared on several radio and television stations such as FOX, BRAVO, NBC, ABC, and CBS and have been profiled in the international press in Canada, Germany, Greece, Ireland, and the United Kingdom. We have represented some of today's most well known business owners, celebrities, and professional athletes.

We have been working around the clock to improve our Firm's online presence to ensure that you receive the most up-to-date information on how to protect everything you own from everyone, every time. We will be constantly updating our social media with new cutting edge information, just click the links above to follow us.

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Best Wishes,

The Presser Law Firm, P.A.
Asset Protection Attorneys

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