



Worksheet Summarizing Asset Protection Techniques and In What Situations They Are Best Suited to Protect Assets

This Worksheet is designed to provide an overview of the many means of protecting your hard earned assets and to give some guidelines as to which asset protection strategies may be appropriate given your personal situation and asset compilation. It is intended to be used in conjunction with the book "The Asset Protection Guide for Florida Physicians" which provides a comprehensive explanation of each technique, the upsides and downsides of each, and many traps for the unwary which are not presented in the overview chart below. This book is available for purchase at <http://www.KirwanLawFirm.com>. The primary overview chart gives a brief overview of the most common strategies used to protect one's individual assets, each strategy's primary upsides and downsides, the price range you should expect to implement it, and the Chapter in the "The Asset Protection Guide for Florida Physicians" that discusses the strategy. As noted above, the chart only provides a summary and should not be relied on alone. Remember that the asset protection techniques described below may not be effective if the creditor you wish to protect against has already been identified. In addition, be aware that the two "Super Creditors," namely the IRS and your spouse, will not be thwarted by most of the techniques set forth below. One final note before proceeding, this Worksheet does not cover the topic of protecting practice assets such as accounts receivable. I have devoted a whole chapter in my book to that subject and suggest that you read it to get a clear understanding of the best methods for protecting these important assets. By the way, I strongly recommend NOT engaging in any account receivable financing structure as it has significant downsides including income tax liability, enormous expenses over time, and weak overall asset protection.

The process described below is designed to help you determine the most appropriate means of protecting your assets by examining the type of asset, your personal situation, and the value of the assets to be protected. Following these steps will help you identify the asset protection techniques best suited for you.

Step 1 - Identify Your Assets.

The obvious beginning point is to identify what assets you own. It is recommended that you do this in writing. You should categorize your assets into the following groups: (1) Primary Residence; (2) Vacation Homes (i.e., real estate used by you other than rental property. Property that is rented part time and used personally part time is usually classified as Investment Real Estate), (3) Investment Real Estate, (4) Non-Retirement Investment Assets (i.e., stocks, bonds, mutual funds, cash, etc. NOT held in an IRA or ERISA plan (i.e., 401k, profit sharing, money purchase, defined benefit, etc.)), (5) Retirement Plan Assets, (6) Life Insurance and Annuities; (7) Personal Property (i.e., Collectibles, Jewelry, Furnishings, Automobiles, etc.), and (8) Business Interests (ownership in closely held companies). If you find it easier, you can download an Estate Planning Questionnaire from <http://KirwanLawFirm.com> which provides a means to categorize your assets.

Step 2 - Identify Which Assets Are Already Exempt.

The next step is to identify which assets are already protected. For example, if your primary residence falls within the constitutional acreage limitations it is protected. Likewise, IRAs and certain (i.e., not all) ERISA plans and cash value of life insurance and annuities are protected from creditor's claims under Florida and/or federal law. Other assets may be protected from a physician's potential malpractice liability but have limitations such as assets held as Tenants by the Entireties and assets held by a lower risk spouse. At this point, consider these assets to be unprotected. Later in step six you will go back and review the upsides and downsides associated with these forms of ownership to determine whether you are comfortable with the level of protection offered by them. Now you should have eliminated the exempt assets from your list of personal assets and are left with the non-exempt assets (i.e., the assets that could potentially be reached by a judgement creditor). On the last page of this worksheet, you will find the Asset Protection Technique Elimination Worksheet. This worksheet contains several blank charts with a blank line above each one to write in the applicable asset class. For example, if your unprotected assets fell into the asset classes of (1) Non-Retirement Investment Assets, (2) Personal Property, and (3) Investment Real Estate, you would fill in the blank line after Asset Class #1 with s with "Non-Retirement Investment Assets", the blank line after Asset Class #2 with "Personal Property," etc.

Step 3 - Identify the Asset Protection Techniques Best Suited to Protect the Asset Class.

Next, use the Asset Class Table on the following page to identify the various asset protection methods available to protect each asset class identified as needing protection. On your Asset Protection Technique Elimination Worksheet, using a pencil, place an X in the box below each asset protection technique identified in the Asset Class Table as being potentially applicable.

Step 4 - Identify the Asset Protection Techniques Best Suited to Your Personal Situation.

Next, use the Personal Situation Table on the following page to identify the various asset protection methods available to protect assets given your personal family situation. On your Asset Protection Technique Elimination Worksheet, **ERASE** the Xs previously marked under all the asset protection techniques that are INAPPLICABLE given your personal situation.

Step 5 - Consider the Cost of the Asset Protection Techniques Relative to the Value of Your Assets.

This is the step that will require the greatest degree of personal discretion. This stems from the fact that there are a few ways of making an appropriate cost-benefit analysis. First, if your unprotected assets are worth a significant amount, the cost of any asset protection technique will be less as percentage of the assets being protected. For example, if you have an investment portfolio worth \$2,000,000, spending \$15,000 on an asset protection technique only amounts to 0.75% of the assets being protected. On the other hand, if your investment portfolio is worth \$500,000, that money may be worth more to you (i.e., the less one has the more it is typically worth to the owner). Therefore, even though the same \$15,000 legal fee now represents 3% of the assets being protected, that cost may be well worth it if the \$500,000 is the bulk of the physician's retirement money. Another way to view the cost benefit analysis is based on how rapidly your assets are growing. I have worked with physicians who have had \$300,000 to \$400,000 of investment assets at the time we met but who were saving \$200,000 to \$300,000 per year. Many of these physicians have felt the fee justified

the protection since it will be protecting more and more assets over time. On the opposite end of the spectrum, I have also worked with physicians who have had over \$5,000,000 in assets who just wanted to place assets in the spouse's name or use TBE ownership despite their downsides because they detested paying for asset protection. One final word on costs, if you decide to use insurance products to protect assets (which may make imminent sense under certain circumstances), make sure you understand the actual cost of doing so. The underlying mortality and administrative expenses associated with life insurance and annuity products typically range from 1% to 3% each year above and beyond what you would pay if those assets were invested outside the insurance product. That can equate to an additional annual cost of \$10,000 to \$30,000 for every \$1 million protected every year and there may be additional penalties if you wish to withdraw the assets. Just make sure that you understand the underlying costs and penalties since they are oftentimes not readily apparent.

After you determine which of the asset protection techniques are more expensive than you feel is appropriate given the value of the assets being protected and their importance to you, go back to your Asset Protection Technique Elimination Worksheet and **ERASE** the Xs previously marked under all the asset protection techniques that you consider excessive from a cost standpoint.

Step 6 - Go Back and Review the Downsides .

The final step is to look at the remaining Xs on your Asset Protection Technique Elimination Worksheet and go back and review the downsides associated with each technique listed on the chart entitled Overview of Primary Asset Protection Techniques. I also recommend reading the relevant chapter of the "The Asset Protection Guide for Florida Physicians" in order to get a complete picture of the upsides and downsides associated with each technique since the chart simply is too small to give a complete picture of everything you may want to know. After you have done this, return to your Asset Protection Technique Elimination Worksheet and **ERASE** the Xs previously marked under all the asset protection techniques which you feel have too many downsides (or even one big downside you feel is very distasteful).

Conclusion.

After completing these six steps, you will be left with the asset protection techniques that have the greatest likelihood of balancing your desire for asset protection with your need for planning that takes into consideration your personal asset structure, your personal family situation, your personal sensitivity as to cost, and your personal view as to each techniques downsides. More importantly, you will understand why these techniques are best suited for you and you will be armed with sufficient information to intelligently discuss asset protection planning with your attorney. You will also want to incorporate your estate and financial planning into your overall plan to ensure that all your needs are being adequately met and will continue to be met over time.

ASSET CLASS TABLE

Asset Type	Relevant Asset Protection Strategies										
	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11
Personal Use Real Estate (Homestead & Vacation Homes)	X†				X	X		X††	X	X	
Investment Real Estate		X*			X	X		X	X	X	
Non-Retirement Investment Assets (i.e., Stocks, Bonds, Cash, Etc.)					X	X	X	X	X	X	X
Retirement Investment Assets (i.e., Stocks, Bonds, Cash, etc. held in IRAs and ERISA Plans)		X	X								
Personal Property (i.e., Collectibles, Jewelry, Furnishings, Automobiles, Etc.)					X	X		X‡	X	X	X ‡
Business Interests (i.e., ownership in closely held companies)		X*			X	X		X	X	X	

PERSONAL SITUATION TABLE

Personal Situation	Relevant Asset Protection Strategies										
	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11
Married with Low Risk of Divorce	X	X	X	X	X	X	X	X	X	X	X
Married with Average to High Risk of Divorce	X	X	X	X			X		X	X	X
Married with Average to High Risk of Divorce but with Close Family Members Amenable to Participating in Asset Protection Plan	X	X	X	X			X	X	X	X	X
Unmarried with Close Family Members Amenable to Participating in Asset Protection Plan	X	X	X	X			X	X	X	X	X
Unmarried Without Close Family Members Amenable to Participating in Asset Protection Plan	X	X	X	X			X		X	X	X

† Note that your personal residence should never be owned by a Revocable Trust, Family Limited Partnership, Limited Liability Company, or anything other than an individual or individuals.

†† LLCs, however, this requires specialized planning beyond the scope of this Worksheet.

* Self-directed IRAs only

‡ Primarily for collectibles

Overview of Primary Asset Protection Techniques

	#1 Homestead	#2 IRAs	#3 ERISA Plans	#4 Wage Accounts	#5 I Gave It To My Spouse Planning	#6 Tenants By Entireties (TBE)	#7 Life Insurance & Annuities	#8 Family Limited Partnerships and Limited Liability Companies	#9 Florida Trusts (i.e., Non-Self Settled Trusts)	#10 Delaware Trusts (i.e., Self Settled Trusts)	#11 Offshore Trusts
General Rule	Primary residence of Florida residents that are 0.5 acres or less (if located within in city limits) or 160 acres or less (if located outside city limits) are protected from creditors regardless of value.	Generally protected under Florida law.	Generally protected, except if only company owners (and spouses) are covered. Grey area exists for plan owners even if other employees are covered (See book).	Protects earnings of Head of Family (one who provides 50% of support for dependent) if deposited in a Wage Account (See book on how to establish). Earnings of a Non-Head of Family are only partially protected (75% of earnings).	Property owned by spouse is generally not reachable by creditors of the other spouse.	Property owned as TBE cannot be reached by the creditors of either spouse individually. A joint creditor of both spouses <u>can</u> reach TBE property.	Cash value of life insurance and annuities are not reachable by creditors in Florida. The death benefit under insurance policies are not reachable by the creditors of the decedent.	These entities can protect assets by virtue of something called Charging Order Protection. In essence, if you are sued, the creditor is typically unable to reach partnership assets unless you decide to distribute them.	Certain trusts established by one person for the benefit of another protect the trust assets from the beneficiary's creditors.	Protects trust assets from the claims of creditors of the person creating the trust if they are a discretionary beneficiary. Administration and assets are typically held in the United States.	Protects trust assets from the claims of creditors of the person creating the trust if they are a discretionary beneficiary. Administration and assets are typically held outside the United States.
Upsides	Inexpensive; Most physician's own their own home. Protection level is presently very solid. Planning opportunities exist for sheltering liquid assets after a law suit is brought but before judgement by paying off a mortgage or buying a new home. Some advanced techniques may be used to protect homes that exceed the constitutional acreage limitations.	Protection level is strong. Tax deduction permitted for contributions to IRAs. Assets in IRAs grow on a tax deferred basis.	Protection is strong if you are a non-owner employee and most probably very strong for owner employees provided the plan also covers non-owner employees. Tax deduction permitted for contributions to IRAs. Assets in IRAs grow on a tax deferred basis.	Inexpensive to establish. Protection level strong; Allows for transfer of wages to other exempt forms of property ownership with less exposure to fraudulent transfer claims from creditors.	Inexpensive to establish; Protection level strong if transfer to spouse was completed before creditor identified; Allows for continued asset protection to physician upon death of non-physician spouse if proper estate planning is undertaken.	Inexpensive to establish; Protection level strong if transfer to TBE was completed before creditor identified.	Simple to establish if health is reasonably good; Protection level strong if transfer to insurance product was completed before creditor identified; Potential for tax deferred/free investment growth; Availability of certain investment guarantees.	Asset protection can be reasonably strong depending on jurisdiction FLP is established and quality of partnership agreement; Creditor may be taxed on portion of FLP income if charging order is obtained by creditor; Ownership of assets can be separated from investment control; Estate and gift tax discounts can ameliorate estate planning.	Can provide strong asset protection with respect to assets received by physician by gift or inheritance; Assets gifted by physician to others can be unreachable by physician's creditors if transfer is made before creditor is identified; Numerous estate planning benefits.	Can provide strong asset protection especially if coupled with FLP or spousal planning; Can protect assets of unmarried physicians; Significant flexibility and ability to control management of trust assets; Expensive for plaintiff to try and collect judgement with no guarantee of success; Can be drafted to terminate upon retirement from medicine.	Can provide very strong asset protection for investment assets capable of being held outside the United States; Trust assets beyond the control of United States courts; Significant flexibility and ability to control management of trust assets; Expensive for plaintiff to try and collect judgement with no guarantee of success; Can be drafted to terminate upon retirement from medicine.
Downsides	Few downsides; Potential for future law changes to limit homestead protection; Homes that are larger than protected acreage can be subject to forced sale.	Limitations on amount that can be contributed to IRAs; Penalties are generally applicable if assets are withdrawn before age 59 1/2.	Limitations on amount that can be contributed to ERISA plans; Penalties are generally applicable if assets are withdrawn before age 59 1/2.	Few downsides; Protection not complete if physician is not "head of family;" Additional administrative burden of having wage account. Not available to sole practitioners or physicians who own a controlling interest in the company that employs them. Specialized planning can sometimes be used to avoid this result.	No asset protection if "low risk" spouse is sued; Spouse can have advantage in case of divorce from a control perspective; If trust is not used, physician may lose control over assets in name of spouse.	TBE does not protect assets from joint creditors of physician and spouse; Asset protection benefits lost on death of low risk spouse without possibility of leaving assets to physician in asset protected trust; Possible increased estate tax cost.	Potentially expensive method of protecting assets especially if no insurance need exists (an additional cost of just 1% means \$10,000 per year to protect \$1 Million in assets); Potential penalties for withdrawing assets before certain dates; Difficult to accurately determine costs and penalties associated with insurance product.	Assets can be "trapped" in FLP / LLC for duration of judgement (20 years) if charging order is obtained by creditor; Moderately expensive to establish and maintain; Single member LLCs offer little to no asset protection from judgement creditors.	Physician cannot be Trustee of a trust he or she is a beneficiary of in Florida; Assets gifted by physician are no longer available to physician.	Cost to establish and maintain on the moderate to high end of the cost spectrum; To date, domestic self-settled asset protection laws have yet to be tested;	Cost to establish and maintain on the moderate to high end of the cost spectrum; Unless properly structured, and timely funded, potential risk of being jailed for contempt of court.

	#1 Homestead	#2 IRAs	#3 ERISA Plans	#4 Wage Accounts	#5 I Gave It To My Spouse Planning	#6 Tenants By Entireties (TBE)	#7 Life Insurance & Annuities	#8 Family Limited Partnerships and Limited Liability Companies	#9 Florida Trusts (i.e., Non-Self Settled Trusts)	#10 Delaware Trusts (i.e., Self Settled Trusts)	#11 Offshore Trusts
Type of assets it can protect.	Primary residence.	Stocks, Bonds, and other similar investment assets; Real Estate (only in Self-directed IRAs).	Stocks, Bonds, and other similar investment assets.	Earnings in the form of wages and bonuses. (Note it does not protect business profits or distributions).	All assets that can be owned by a non-physician, including: Stocks, Bonds, and other similar investment assets; Business Interests; Real Estate; etc.	All assets that can be co-owned by a physician and a non-physician including: Stocks, Bonds, and other similar investment assets; Business Interests; Real Estate; etc.	Stocks, Bonds, and other similar investment assets purchased under the terms of the relevant insurance product.	Real Estate; Stocks, Bonds, and other similar investment assets; Collectibles.	All assets that can be owned by a non-physician, including: Stocks, Bonds, and other similar investment assets; Business Interests; Real Estate; etc.	All assets that can be owned by a non-physician, including: Stocks, Bonds, and other similar investment assets; Business Interests; Real Estate; etc.	All assets that can be owned by a non-physician, including: Stocks, Bonds, and other similar investment assets; Business Interests; Real Estate; etc. NOTE that if the asset cannot be held outside the boundaries of the United States, the asset protection will not be as strong with respect to those assets.
Who Should Consider Using It?	All physicians who own their own homes that meet the constitutional acreage requirements; Any physician who has already identified a creditor and who has unprotected, liquid assets. NOTE that some advanced techniques may be used to protect homes that exceed the constitutional acreage limitations.	All physicians who (i) qualify to contribute to IRAs; (ii) are willing to save for retirement; and (iii) are accepting of the present limitation as to immediate access.	All physicians who (i) have an established ERISA plan to contribute to; (ii) are willing to save for retirement; (iii) are accepting of the present limitation as to immediate access; and (iv) who are not sole practitioners with no non-owner employees (note that a spouse does not qualify as a non-owner employee).	All physicians who do not own a controlling interest in the entity that employs them.	All physicians (i) married to "lower risk" spouses, (ii) who consider themselves to have a low risk of divorce.	All physicians (i) who do not own high risk property (i.e., such as rental real estate) jointly with their spouse (even as TBE) and (ii) who consider themselves to have low risk of divorce.	Any physician who understands the costs, penalties, and limitations of the insurance product from a financial perspective and finds them to be an intelligent method for investing assets. NOTE the associated additional costs can make perfect sense if the physician has an insurance need or wants to take advantage of certain investment guarantees.	Any physician who (i) has a spouse or at least one other person willing to be a partner in the FLP, and (ii) who has sufficient exempt sources of cash flow (i.e., insurance / annuity cash value, IRAs, retirement assets, exempt wages, disability insurance proceeds, etc.) in case a charging order is unavailability to the physician during the duration of the judgement.	Any physician expecting to receive a large gift or inheritance from someone willing to establish such a trust; Any physician wishing to gift assets to another, understands that the physician will lose access to the gifted asset, and who wants to gain the associated estate planning benefits and/or provide the trust beneficiary with asset protection benefits. Note that the beneficiary can sometimes be the physician's spouse.	Any physician wishing to gain greater asset protection, who does not wish to place assets beyond their ultimate reach, who wishes to maintain investment control over the trust assets, and who understands the methods of ameliorating the protection offered by these trusts by mitigating the associated with the untested nature of the domestic self-settled trust laws.	Any physician wishing to gain greater asset protection, who does not wish to place assets beyond their ultimate reach, who wishes to maintain investment control over the trust assets, who is comfortable having assets held in a Swiss bank or other offshore financial institution, and who understands the methods of ameliorating the protection offered by these trusts by mitigating the downsides associated with the potential contempt of court risks.
Cost Range (the price range is an average and may be more or less based on complexity of planning).	Price of home.	Free or very inexpensive.	Relatively inexpensive for most ERISA Plans.	Free or very inexpensive.	Free if no trust is used; If trust is used generally \$2,400 to \$3,000.	Free or very inexpensive.	Typically from 1% to 3% per year of assets invested in the insurance product.	\$8,000 to \$10,000 to establish; \$500 to \$1,000 per year to maintain.	\$1,000 to \$3,000 to establish.	\$14,000 to \$16,000 to establish. \$3,000 to \$3,500 per year to maintain.	\$20,000 to \$30,000 to establish. \$3,000 to \$4,000 per year to maintain.
Chapter in Book Giving Detailed Explanation.	Chapter 8	Chapter 9	Chapter 9	Chapter 10	Chapter 12	Chapter 11	Chapter 13	Chapters 15 and 16	Chapter 17	Chapter 18	Chapter 19

The above chart is designed to give an overview of many, but not all, methods of protecting one's assets from the claims of judgement creditors. Greater asset protection is oftentimes obtained by combining techniques (one example is combining an FLP or LLC with a Domestic or Offshore Asset Protection Trust), and using techniques beyond the scope of this Worksheet. In addition, much of a plan's overall effectiveness stems from the manner in which the documents are drafted and the plan is funded (e.g., funding asset protection structures with exempt assets such as TBE property, for example). Many trusts, partnership agreements, and other legal documents I have reviewed offer very little protection because the attorney or planner did not fully understand the nuances of the technique or the oftentimes hidden traps for the unwary. Please ensure the person you choose to implement your asset protection plan can fully explain the upsides and downsides of the recommendations they are making (and there is always a downside) and intelligently integrates it with your estate and financial plan. If you do not understand a technique's downsides, you should not implement it as part of your planning.

ASSET PROTECTION TECHNIQUE ELIMINATION WORKSHEET

Asset Class #1 - _____

#2 IRAs	#3 ERISA Plans	#5 I Gave It To My Spouse Planning	#6 Tenants By Entireties(TBE)	#7 Life Insurance & Annuities	#8 Family Limited Partnerships and Limited Liability Companies	#9 Florida Trusts (i.e., non-self settled trusts)	#10 Delaware Trusts (i.e., Self Settled Trusts)	#11 Offshore Trusts

Asset Class #2 - _____

#2 IRAs	#3 ERISA Plans	#5 I Gave It To My Spouse Planning	#6 Tenants By Entireties(TBE)	#7 Life Insurance & Annuities	#8 Family Limited Partnerships and Limited Liability Companies	#9 Florida Trusts (i.e., non-self settled trusts)	#10 Delaware Trusts (i.e., Self Settled Trusts)	#11 Offshore Trusts

Asset Class #3 - _____

#2 IRAs	#3 ERISA Plans	#5 I Gave It To My Spouse Planning	#6 Tenants By Entireties(TBE)	#7 Life Insurance & Annuities	#8 Family Limited Partnerships and Limited Liability Companies	#9 Florida Trusts (i.e., non-self settled trusts)	#10 Delaware Trusts (i.e., Self Settled Trusts)	#11 Offshore Trusts

Asset Class #4 - _____

#2 IRAs	#3 ERISA Plans	#5 I Gave It To My Spouse Planning	#6 Tenants By Entireties(TBE)	#7 Life Insurance & Annuities	#8 Family Limited Partnerships and Limited Liability Companies	#9 Florida Trusts (i.e., non-self settled trusts)	#10 Delaware Trusts (i.e., Self Settled Trusts)	#11 Offshore Trusts