GOOSMANN LAW FIRM

Asset Protection Checklist

The goal of asset protection is to make it as difficult as possible for any creditor to reach your assets, provide you negotiating power, and reduce the risk of your assets being subject to a judgment. There are no guarantees. However, there are steps you can take to help make yourself more "judgment proof" and keep you in control of your assets. Asset protection must be done before it is needed or it can be fraud. We do not live in a bubble and our lives change. This should be reviewed with your lawyer every 2 years. You should have your CPA review your plan for tax implications. Note, Revocable Living Trusts (RLTs) do NOT provide asset protection. RLTs can help your estate avoid probate when you die if your assets are owned by your RLT.

For Assets Currently Titled in Your Name or in a Revocable Living Trust:

- ☐ **South Dakota LLC**s created. SD is an asset protection friendly state and limits a judgment creditor to obtaining a **charging order** against your SD LLC rather than forcing you to liquidate or transfer your membership interest to them. Judgment creditors are limited to the distributions you take out of the LLC. The State of Organization should not allow creditors to collect on personal judgments against company assets. (Note, IA and NE do not limit creditors to charging orders on LLCs. Consider converting to SD).
- ☐ **Vehicles** titled in the name of the primary driver or an LLC. Plaintiffs sue the driver and the owner. Do not have vehicles in your name that you let other people drive. Have kids' cars in the child's name, not yours. The risk is not worth the value of the car.
- ☐ **Add LLCs** as value grows. After exceed $1M in asset value, create a new LLC. In general, every $1M in assets in a different LLC or up to client's risk tolerance level.
- ☐ **Real estate** should be owned in an LLC. Different parcels owned in different LLC to minimize risk from one parcel to the next.
- ☐ **Toys** such as boats, ATVs, jet skis, snowmobiles, campers, trailers should all be owned and titled in a Toys LLC.
- ☐ **S-Corp, C-Corp and Partnership shares** are subject to transfer to a creditor. Analyze converting to a SD LLC.

Companies:

- ☐ Create a **SD LLC as a holding company** in an asset protection friendly state to hold other entities. File as a foreign corporation in state you operate in if needed.
- ☐ **Real estate** owned in a separate LLC from the operating entity and leased to the operating company.

- ☐ **Fleet of vehicles** owned in a separate LLC from the operating entity and leased to the operating company.
- ☐ **Intellectual Property** owned in a separate LLC from the operating entity and licensed to the operating company.
- ☐ **Equipment** owned in a separate LLC from the operating entity and leased to the operating company.
- ☐ Different **Divisions** and **locations** of the Company separated into different LLCs with necessary intercompany agreements.
    - Examples: manufacturing LLC, wholesale LLC, retail LLC, fleet LLC, real estate LLC, IP LLC, Equipment LLC and Operating or Management LLC. All owned by SD Holding CO LLC
    - **Benefits:** 1) Richard Geer in Pretty Woman: Sum of parts worth more than the whole. Can sell off one division or location. 2) Also, different LLCs can have different ownership. For example: can give key man 10% of a location or new division. 3) Moreover, you can disclose and roll up all LLCs onto one balance sheet for banking purposes.

Additional Considerations:

- ☐ **Operating Agreement:** The Operating Agreement should be reviewed for restrictions on distributions, such as requiring a Member vote. For LLCs owned by close family consider a Poison Pill provision.
- ☐ **Buy Sell Agreement**: Every company with multiple owners should have a funded Buy Sell Agreement.
- ☐ **Insurance Review**- make certain correct entities are "named insured" and have umbrella policies for holding company and for management/operating entity.
- ☐ **Revocable Living Trusts**: Your Holding Company LLC units should be titled in the name of your RLT to avoid probate when you die.
- ☐ **Lien Up Your Assets:** Have an Open Line of Credit on your Assets that you can draw on if you need. The Bank should have a mortgage or security agreement on file. You can have a $1M line and only have $50k drawn on it and then draw the remainder when you need. This way you can essentially "pull" the value out of the asset with the LOC.
- ☐ **State Exemptions:** Each state has exemptions. Use them for your primary state of residence. Note, FL and TX are best. IA has unlimited homestead. Must be careful about residency requirements. FL requires intent and 6months + 1 day.
- ☐ **Trusts:** Use a Trust Protector and add "shall consider" language before distribution language.