

Asset Protection Newsletter

JUNE 2012 ISSUE

The Presser Law Firm, P.A.

Asset Protection Attorneys

561-953-1050 (w)

800 Fairway Drive

Suite 340

Deerfield Beach, FL 33441

[EMAIL ME](#)

[MY WEBSITE](#)



Welcome to Our June 2012 Asset Protection Newsletter!



What types of cases might you not accept?

We are quite busy and therefore selective about accepting clients. First and foremost, we reject prospective clients who come to us for improper purposes. We don't want clients whose goal is to defraud, money launder, evade taxes or play other games. Our job is difficult enough and we don't need cases that involve improper objectives or means. Moreover, we won't



Important Changes in Florida Law

2010 brought a significant change

accept cases that would assist, say, a divorced father from paying child support or defrauding a spouse in a divorce proceeding. We actually refuse quite a few prospects when we are not comfortable with the situation. We also have to have the right 'fit' with the client. Some prospects may have unrealistic expectations, not cooperate in implementing their plan, or are game-players. So there is a screening process, including background checks, before someone becomes a Presser Law Firm, P.A. client.

How many of your clients, in the final analysis, actually needed their asset protection plan?

They all needed it because not one could be certain trouble wouldn't someday strike. It's no different than buying insurance. You buy it with the hopes you won't need it. But if you do need it – it's there. Meanwhile, our clients know that they are safe – no matter what. Those who are unprotected can only hope.

Can you give us an overview on how an asset protection plan is designed?

If you ask five attorneys this same question, you would get five different responses. The same could be said about asset protection. This "same question, different answer" phenomenon is partly due to the fact that laws constantly evolve and change; that asset protection is as much an art as a science; and that there is more than one way to effectively protect one's assets. Moreover, one must always consider the laws of the client's state as well as federal law. Finally, no two clients or their situations are precisely the same. Still, some fundamental components are common to every sound asset protection plan.

Asset protection is far more complex than most people, and even some planners would believe. The less effective

in Florida law with regard to limited liability companies and creditor protection. In June of 2010, the 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.

A charging order represents a lien that entitles a judgment creditor to receive distributions from the LLC or a limited partnership, for that matter, in place of the debtor-member. It had been understood, until *Olmstead* that this was the exclusive remedy of a judgment debtor against an LLC membership interest. The *Olmstead* decision changed that but left the issue very vague for practitioners who set up LLCs for clients given that the decision did not clarify whether multi-member LLCs would also be subject to this decision.

The Florida Legislature recognized the uncertainty with which we were all left at *Olmstead* and recently passed new legislation clarifying the breadth of the *Olmstead*. They changed

planner will only address the “what do we do and how do we do it” aspects of asset protection. However, there are actually five dimensions that we must address in order to construct a truly effective plan: these are the What, When, How, Why and Where of asset protection.

The ‘What’ of asset protection covers what assets we wish to protect.

The ‘When’ of asset protection deals with when to implement a plan in relation to a creditor threat. If one implements a plan before creditors threaten, the plan may be relatively simple yet still effective to repel a future creditor attack. Planning after the storm clouds have gathered usually requires more sophisticated planning and often more extreme measures, and sometimes (depending on the circumstances) the plan has less of a likelihood to succeed. The ‘When’ of asset protection then primarily deals with fraudulent transfer law.

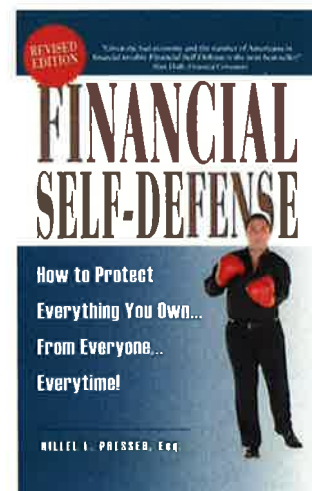
The ‘How’ relates to how we implement the three core strategies. The ‘How’ of asset protection also deals with how we maintain a plan once it is in place.

The ‘Why’ of asset protection? In short, the best asset protection plans have an ostensible, viable, bona fide reason for being implemented other than asset protection itself. Asset protection is the icing on the cake, so to speak. Asset protection only for asset protection’s sake may lead a judge to consider the planning an attempt to delay, defeat, or hinder a creditor, which is a violation of the fraudulent transfer law. In this instance, the judge typically sets aside the plan, allowing a creditor to reach supposedly protected assets.

The ‘Where’ of asset protection deals with choice-of-law, conflict-of-law, and jurisdictional issues. For a sample

F.S. 608.433 to make it clear that the charging order is still the exclusive remedy to a judgment creditor of a member in a multi-member Florida LLC. However, it also clarified that a judgment creditor of a member in a single-member LLC must satisfactorily demonstrate to the court that “distributions under a charging order will not satisfy the judgment within a reasonable time, a charging order is not the sole and exclusive remedy”.

For those who do have Florida LLC's, please do not hesitate to contact us with any questions or concerns.



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jurisdictional issue, consider assets located outside the U.S. and outside the reach of a U.S. judge. An example of a choice-of-laws issue may be someone who sets up a Nevada Corporation, with Nevada-based management, yet he and his assets are in Missouri. What laws will be used to determine how those assets are treated for debtor-creditor purposes when the stockholders are sued in Iowa? Finally, a conflict-of-laws issue could arise when a resident of a state (for example, Texas) is sued in federal court. Will Texas' unlimited homestead protection hold up when a Texas citizen is sued by the FTC in a federal suit? You can see that protecting one's assets takes considerable thought to handle the many variables.

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

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, 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. 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.

Our Asset Protection Newsletter will show you how to utilize proven strategies to shelter your assets; tools and tactics that we use as Asset Protection Attorneys to successfully shield the wealth of thousands of individuals, families, and companies. It will provide scores of little known strategies, tactics, and Asset Protection secrets. It will give you the straight talk, tell you what really works, what doesn't, and why. It will also help you avoid the common mistakes and errors that you may be making right now - mistakes which can undermine your financial

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

800 Fairway Drive
Suite 340
Deerfield Beach, FL 33441

info@AssetProtectionAttorneys.com
www.AssetProtectionAttorneys.com

security!

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If you know a colleague, friend, family member or anyone that would benefit from this important information, please have them contact us to be added to our newsletter!

Best Wishes,

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

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