

Asset Protection Newsletter

The entrepreneur always searches for change, responds to it, and exploits it as an opportunity.

– Peter F. Drucker



Welcome to Our October
2013 Asset Protection
Newsletter!

Can you explain how spouses holding property as tenancy-by-the-entirety helps in protecting assets?

Certainly. Of the four types of co-ownership, only tenancy-by-the-entirety (TBE) may provide meaningful asset protection. Tenancy-by-the-entirety is a special type of co-ownership only available to a husband and wife. Tenancy-by-the-entirety ownership must also meet the requirements of joint tenancy in order to be valid. And if a couple divorces, then ownership will be held as tenants-in-common or as joint tenants rather than as tenants-by-the-entirety. Tenancy-by-the-entirety offers right of survivorship benefits (as does joint tenancy), but it may also protect the asset in certain states, provided only one spouse comes under creditor attack. This is because, in most states, tenancy-by-the-entirety property may not be transferred or otherwise alienated without the other spouse's consent. Furthermore, neither spouse owns a fractional share in the property. Rather, each spouse claims an entire ownership interest in the property, but such ownership rights is subject to the other



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Important Changes in Florida Law

Latest update: In June of 2010, the

spouse maintaining their property rights as well. Because their respective ownership interests are not divisible and may not be transferred without the other spouse's consent, most Tenancy-by-the-entirety states do not allow a creditor of only one spouse to attach tenancy-by-the-entirety property without the consent of both spouses.

Unfortunately, tenancy-by-the-entirety ownership is not available in all states. And in those states where it is available, it may not be allowed for all assets. Some states prohibit tenancy-by-the-entirety ownership either by case or statutory law, and in other states it is unclear whether tenancy-by-the-entirety ownership is allowed. One should still consult the statutory and case law of his or her particular state, as there are further differences in tenancy-by-the-entirety laws. For example, a few states restrict tenancy-by-the-entirety ownership only to primary residences. Alaska, Hawaii, Tennessee and Vermont specifically allow rental real estate to be held in tenancy-by-the-entirety, yet other states may allow it by case law.

There are many cases where tenancy-by-the-entirety ownership has successfully shielded assets. Nonetheless, we usually conclude that this form of ownership cannot be relied upon as an impenetrable creditor defense. On the upside, it's very easy to title assets as tenants-by-the-entirety between a husband and wife in those states that allow it, and in those states, it is a great way to add an extra layer of protection.

For example, in a state that recognizes tenancy-by-the-entirety ownership, it may be a good idea to so title the ownership of business entities as tenancy-by-the-entirety. Nonetheless, merely saying an asset is held in the tenancy-by-the-entirety is not sufficient. The title documents to the asset should expressly state that the asset is held as tenants-by-the-entirety.

Can other forms of co-ownership protect your assets?

Not generally. For example, two or more parties may own property as tenants-in-common, yet that's a dangerous form of ownership because each co-owner's interest is vulnerable to his or her creditors. As importantly, these co-owners are both personally liable for any liability created by the asset. The same is true with property jointly owned with right of survivorship (JTWROS). Families and spouses often use this form of ownership to avoid probate, but it presents the same problems as tenancy-in-common. It's far safer to co-own assets through a protective entity – such as a limited partnership or LLC – than as tenants-in-common or JTWROS, because these entities limit your personal liability. Moreover, your ownership interest in these entities would also be protected from your personal creditors. Direct co-ownerships other than as tenants-by-the-entirety is almost always

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.

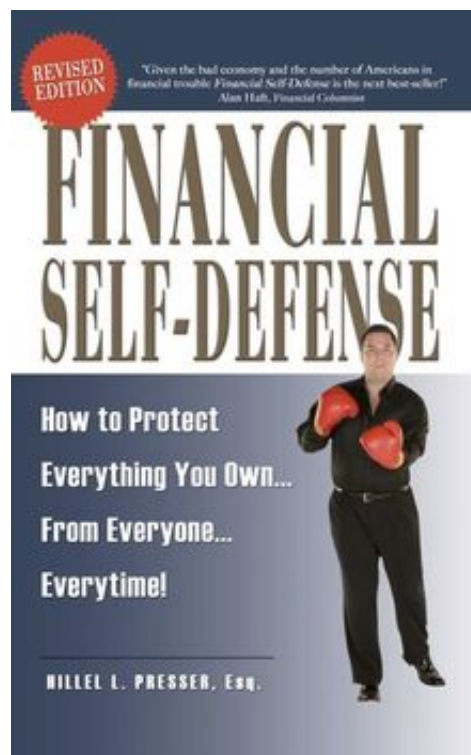
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a mistake.

What can happen if my Will is not created properly?

First, let's start with the definition of a Will. A Last Will and Testament is a document that states how your probate assets will be distributed at your death, who will act as the personal representative (executor), and who will be the guardian(s) of your minor children. This is to be distinguished from a living will, which covers life prolonging procedures and treatment in the event of incapacity.

If your Will is drafted improperly then the you risk unintended beneficiaries having access to your assets or intended beneficiaries receiving the wrong assets.

In addition, your minor beneficiaries may mistakenly receive assets when they are 18 rather than at a later date (when they can act more responsibly).

Further, your personal representative may be required to post a bond in order to handle your estate, which is an additional cost to the estate and creates delays and additional attorney's fees.

Finally, a Will that is not properly drafted can be rejected by the courts and can require witnesses to appear at the courthouse to sign paperwork as to the validity of the Will.

In all, its very important that your Will is drafted by a knowledgeable Estate Planning Attorney, as your whole estate could be affected by a shoddy Will.

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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.

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Best Wishes,

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