

The law firm of Orr & Reno is pleased to announce that

John M. Zaremba

has joined the firm as a member of the
Core Business group.



Jack is a business lawyer with experience in corporate, real estate and tax matters. He has counseled large and small companies in private securities offerings, debt financings, mergers and acquisitions, strategic transactions and joint ventures and other complex transactions. In addition, Jack has experience in structuring tax-efficient transactions and entities, and has represented clients before the Internal Revenue Service, the United States Tax Court and the United States Court of Claims.

Jack holds a B.A. from the University of Notre Dame, a J.D. from the University of Texas at Austin School of Law and an L.L.M. in taxation from Georgetown University Law Center. Before joining Orr & Reno, Jack practiced in Washington, DC and Boston, MA. Prior to entering law school, Jack practiced as a certified public accountant with a national accounting firm in New York City. He is a member, ABA sections of Business Law, Taxation and Real Property, Trusts and Estates. Jack is admitted in Massachusetts and the District of Columbia.

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RESOURCES • legal

Asset protection planning in New Hampshire

By Amy K. Kanyuk

Like New Englanders who complain about the weather, owners and executives of small businesses worry about being sued, but don't do anything about it.

A recent nationwide survey of small-business owners and executives revealed that two-thirds of the respondents were worried about lawsuits, but less than a fifth had a plan to protect their personal assets.

Although there isn't much you can do about the weather, you can design a plan to place assets beyond the reach of your creditors. The complexity of such a plan — known as an asset protection plan — can range from very simple to extremely complicated, depending on the nature and extent of your assets, your budget and your pain threshold for dealing with lawyers and paperwork.

The first step in asset protection planning is avoiding a "fraudulent" transfer. Assets that you transfer fraudulently are still available to your creditors. You can't transfer assets to put them beyond the reach of a known creditor, or to make yourself insolvent. If you're already being sued, or

are about to be sued, it's too late to do any legitimate planning.

New Hampshire law affords some automatic asset protection to its residents. The state's "homestead exemption" protects up to \$100,000 of the equity in your home from your creditors. If you're married, your spouse also has homestead rights in your residence, so up to \$200,000 of equity is protected.

New Hampshire law also protects your IRA, 401K and other qualified retirement plan assets from your creditors. This means that creditors cannot reach any of your retirement savings, as long as the assets remain within the retirement plan. Life insurance cash values and commercial annuities generally enjoy unlimited protection too.

Purchasing an umbrella liability insurance policy is a simple way to obtain additional creditor protection. The umbrella coverage applies when you exceed the limits of your primary auto or homeowner's policy.

It's important to remember, however, that liability insurance won't cover everything for which you might be sued, including sexual harassment and other "intentional torts." Even if coverage is available, your personal assets will be exposed to the extent a claim exceeds the limits of your policy.

If your spouse doesn't have the same liability concerns that you do, you might consider transferring some of your assets to him or her. If you're sued, your creditors can't reach assets owned solely by your spouse. The downside to this strategy is that you no longer manage or control the property. If you divorce, the assets will belong to your spouse (subject to a property settlement).

If divorce isn't a concern, and you expect your spouse to share the use and control of the transferred property, this is a good, low-cost asset protection option.

Establishing a trust, and transferring assets to it, also can put assets beyond the reach of creditors. For the past decade, "offshore" asset protection trusts have been in vogue. Clients establish trusts in "debtor-friendly" foreign jurisdiction, such as the Cook Islands, and transfer their assets to them. These trusts allow clients to continue to use and enjoy the transferred assets, but (at least in theory) protect the assets from the clients' creditors.

However, administrative complexity (where exactly are the Cook Islands?), expense and recent U.S. judicial attacks on the efficacy of these trusts make them useful only for the adventurous.

In recent years, a handful of U.S. states — but not New Hampshire — have adopted laws allowing individuals to set up "domestic" asset protection trusts. New Hampshire residents can create such trusts in the states that permit them. Domestic >

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Understanding 401(k) fees and fiduciary duties

By Lance Roberts

There are nearly half a million 401(k) plans in the United States, and for each plan, one — or more commonly, several — company executives have fiduciary responsibilities for plan oversight.

Most executives and plan trustees know they are fiduciaries. Few fully comprehend the responsibility — and liability — this entails. When you accept fiduciary responsibility, you are exposed to fiduciary liability, which includes personal liability.

Small employers in particular, but even sophisticated, middle market employers, do not have the time, experience or information to fully understand and manage the plan expenses or evaluate true investment costs.

Managing a qualified retirement plan can be a daunting task. For those plan sponsors trying to get answers, it is sometimes nearly impossible to know what questions to ask — or what answers to expect. For this and other reasons, the vast majority of retirement plans outsource these responsibilities to various service providers. This can be a seriously flawed approach.

Many employers rely on name-brand service providers hoping that will discharge their responsibilities about knowing plan and investment expenses. That is a dangerous game. Just open the business section of your local newspaper. It seems that every day a new mutual fund family or bank is being investigated and/or charged by the SEC and attorneys general.

Unfortunately, there is no substitute to taking

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asset protection trusts generally are easier and less expensive to establish and maintain than foreign trusts. However, a domestic asset protection trust may not provide the same level of asset protection as an offshore trust.

Finally, two less exotic strategies available to New Hampshire residents include irrevocable trusts and limited liability companies.

If you transfer assets to an irrevocable trust, and you neither control the trust as trustee nor retain an interest in the trust as a beneficiary, your creditors can't reach the trust assets. But neither can you. Your spouse, however, can be a beneficiary, and in some cases, the trustee.

A limited liability company is similar to a partnership, except none of an LLC's members is personally liable for the LLC's liabilities. If an LLC member is sued individually, his creditors can't attach any of the LLC's assets. LLCs are now the entity of choice to hold commercial and rental real estate in New Hampshire.

The estate plan of any New Hampshire business owner or executive should include some element of asset protection planning. Using a variety of asset protection strategies will provide the most protection and, it's hoped, some peace of mind. **NBR**


Amy K. Kanyuk, of the Concord law firm of McDonald & Kanyuk, concentrates her practice in the areas of estate, gift and generation-skipping planning for high net worth individuals.

the time, educating yourself about what you need to know, asking those hard questions and demanding answers to them.

In addition to the late-day trading problems, plan sponsors are now learning of various "pay to play" arrangements between fund families and their distributors, which have created undisclosed "soft dollar" compensation for service providers. In some cases, this compensation is used to offset overall plan costs. However, in other cases it increases a plan's costs, without being disclosed.

Every company that has a 401(k) plan needs to know whether its vendors are being paid to recommend investments or perform services for mutual fund companies that have never been disclosed. Plan sponsors are beginning to realize the fee they pay their investment professionals, record-keepers or other vendors is being supplemented — sometimes substantially — by mutual fund companies. Many of these fees are taken directly out of the retirement plan's asset — so if you don't know how to look for it or ask about it, you'll never find it. **NBR**

Lance M. Roberts is executive vice president of Advisors Capital Resources, which is presenting, along with the McLane Law Firm, a Jan. 13 seminar on "Understanding Your 401(k) Fees" at the McLane firm's offices in Manchester. For more information, call Cindy Motta at 627-7000 or e-mail info@acinvest.com.



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