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Course Description:

ASSET PROTECTION

Is your home safe from creditors? If you run a business, how should your business be structured to safeguard personal assets from business debts and business assets from personal debts? How can you avoid confiscatory estate taxes and structure trusts for your children which will be "bulletproof" from their creditor? What are limited liability companies and asset protection trusts and why are they so popular in today's litigious society? What other techniques are available to protect your assets from creditors? What impact does the new bankruptcy law have on asset protection? These topics and more will be covered in this course which will guide you through the rocky shoals of asset protection law.

Robert J. Kolasa - Attorney, C.P.A., former IRS Attorney.

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Course Outline:

ASSET PROTECTION

By: Robert J. Kolasa, C.P.A., J.D., LL.M. (Tax)

1. **What is Asset Protection?**
 - a. Creating hurdles to prevent creditors from seizing your assets
 - b. Minimize risk of personal liability.
 - c. Owning property in protected form to take away the economic incentive for a lawsuit against you.

2. **Threats to your assets - the litigation explosion.**
 - a. Deep pocket defendants.
 - b. Property owners
 - c. Officers and directors.
 - d. High risk professions.
 - e. Business risks.
 - f. Family Risks.
 - g. Taxes.

3. **Asset Protection Goals.**
 - a. Favorable Settlement of law suits.
 - b. Place assets beyond reach of creditors.
 - c. Maintain control of assets.
 - d. Avoid or minimize fraudulent conveyances, probate and taxes.
 - e. Avoid bankruptcy.

4. **Common Mistakes.**
 - a. General partnerships.
 - b. Spouse involved in business.
 - c. Personal guarantees.
 - d. Delinquent employment taxes.
 - e. Commingling of assets.
 - f. Non-separation of risks.

5. **Asset Protection Pyramid.**
 - a. Gifts.
 - b. Liability Insurance.
 - c. Exemption Planning
 - i. Creditor exemptions.
 - ii. Estate tax exemptions.
 - d. Domestic Trusts.
 - e. Corporations and LLCs.
 - f. Offshore Trusts.

6. **Gifts.**
 - a. Simple.
 - b. Outright or Gifts in Trust.
 - c. Gifts to less vulnerable spouse.
 - d. Gifts to children.
 - e. Problems.

7. **Fraudulent Transfers.**
 - a. Actual fraud.
 - b. Constructive fraud.
 - c. Solvent debtor.
 - d. Insolvent debtor.
 - e. Avoiding fraudulent transfers.
 - f. Solvency analysis.

8. **Insurance.**
 - a. Does not cover all risks.
 - b. Claims exceeding policy limits.
 - c. Bankruptcy of insurance company.
 - d. Paints a target?
 - e. Umbrella liability insurance.

9. **Major Illinois Creditor Exemptions.**
 - a. Life insurance and annuities.
 - b. Retirement plans.
 - c. Tenancy by entireties real estate.
 - d. Converting “non-exempt” assets to “exempt” assets.

10. **Estate Tax Exemption Planning.**
 - a. Utilizing both credits for married couple.
 - b. Likely tax legislation.

11. **Domestic Trusts.**
 - a. Self-Settled Trusts (created by debtor for benefit of debtor).
 - i. General rule.
 - ii. Domestic Asset Protection Trusts.
 - b. Other Trusts (created by debtor for benefit of another person).
 - i. Spendthrift trusts.
 - ii. Discretionary trusts.
 - iii. Specialized trusts.
 - iv. Beneficiary controlled trusts.

12. **Corporations.**
 - a. State law.
 - b. “Inside Out” liability protection.
 - i. Tax benefits.
 - ii. Personal creditors can seize stock.

13. **Limited Liability Companies (“LLCs”).**
 - a. State law.
 - b. Tax law.
 - c. “Inside Out” liability protection
 - d. “Outside In” liability protection - the Charging Order remedy.
 - e. Erosion of Charging Order protection:
 - i. Judicial foreclosure of LLC interests.
 - ii. Alter ego theory.
 - iii. Single member LLC.
 - iv. Case law.
 - v.

14. **Entity Protection Strategies.**
 - a. Separation.
 - b. Unbundling.
 - c. Equity Stripping.

15. **Offshore Asset Protection Trusts.**
 - a. Advantages.
 - i. Client can be discretionary beneficiary (“self-settled” trust).
 - ii. U.S. judgments not respected.
 - iii. Short statute of limitations.
 - iv. High proof standard.
 - v. Creditor expense and psychological barriers.
 - b. Disadvantages.
 - i. Cost.
 - ii. The Anderson case and judicial attacks.
 - iii. 10-year statute of limitations under new Bankruptcy Act.
 - c. Structure.
 - d. Role of Trust Protector.